

Prepared by:
Return to: Forsyth County Housing
via interoffice mail

**FORSYTH COUNTY HOME
AFFORDABLE HOME OWNERSHIP PROGRAM
DEED OF TRUST**

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

“Property Address”

THIS DEED OF TRUST made and executed this _____ day of _____, , by and between (the “Borrower”); GLORIA WOODS (the “Trustee”); and FORSYTH COUNTY (the “Lender”):

W I T N E S S E T H :

THAT WHEREAS, the Lender agrees to advance to the Borrower the sum of Dollars (\$ _____) under the HOME Investment Partnerships Act, evidenced by the Promissory Note (the “Note”) from the Borrower to the Lender dated the same date as this Deed of Trust, which together with any amounts advanced to protect the security of this Deed of Trust shall be the total amount secured;

AND WHEREAS, it has been agreed that the Loan will be advanced subject to the terms and conditions for use of the property as set forth in the Note and this Deed of Trust, and which is repayable, if not sooner paid, on the date of Upon sale of the residence;

AND WHEREAS, it has been agreed that the Loan shall be secured by the conveyance of the land described in this Deed of Trust;

NOW, THEREFORE, in consideration of the premises and for the purpose aforesaid and for Ten Dollars (\$ #.#.# #) paid by the Trustee, the receipt of which is hereby acknowledged, the Borrower has bargained and sold and by these presents does bargain, sell and convey unto said Trustee, the Trustee’s heirs, successors and assigns, the premises in _____ Township, Forsyth County, North Carolina, described as follows:

See Exhibit “A” attached hereto and made a part hereof.

together with all heating, plumbing and lighting fixtures and equipment now or hereafter attached to or used in connection with the premises (the "Property").

TO HAVE AND TO HOLD the Property, with all privileges and appurtenances thereunto belonging, to the Trustee, the Trustee's heirs, successors and assigns forever, upon the trust, terms and conditions and for the uses set forth in this Deed of Trust.

If there shall be any default in any of the terms, covenants or conditions of the Note, the terms of which are made a part of this Deed of Trust and incorporated by reference, or any failure or neglect to comply to the satisfaction of the Lender with the covenants, terms or conditions contained in this Deed of Trust, and if the default is not made good within the time period set out to cure such default, or if not is set out, within thirty (30) days, the Note shall, at the option of and upon demand of the Lender, at once become due and payable, and it shall be lawful for and the duty of the Trustee, upon request of the Lender, to sell the Property at public auction for cash, after having first given such notice of hearings as to commencement of foreclosure proceedings and obtained findings or leave of court as may be then required by law and giving notice and advertising the time and place of sale in the manner as may be then provided by law, and upon sale and any resells and upon compliance with the law then relating to foreclosure proceedings to convey title to the purchaser in fee simple. The proceeds of the sale, after the trustee retainshis commission, shall be applied to the costs of sale, the amount due on the Loan and otherwise as required by the then existing law relating to foreclosures. The Trustee's commissions shall be five percent (5%) of the gross proceeds of the sale.

The said Borrower does hereby covenant and agree with the Trustee and Lender as follows:

1. **PAYMENT AND PERFORMANCE.** Borrower shall pay the Note and perform all other requirements at the times and in the manner provided in the Note and herein.

2. **RECAPTURE PROVISIONS.** In the event Borrower proposes (the "Proposal") to transfer (the "Sale") the Property (other than pursuant to an approved Assumption as defined in the Note) at a price that will not generate a sum (the "Net Proceeds") after payment of the First Loan as defined in the Note and all costs of Sale, which is sufficient to pay the Note in full, Lender shall have a Right of First Refusal to purchase the Property at the price contained in the Proposal exercisable prior to the expiration of forty-five (45) days after Lender receives a copy of the Proposal. In the event Lender fails to exercise this right, and Borrower transfers the Property pursuant to the Proposal, Lender agrees to accept the Net Proceeds in full satisfaction of the Note. Notwithstanding the foregoing, if the price set out in the Proposal does not reflect fair market value of the Property, Lender shall have the right to demand that the Note be paid in full.

3. **INSURANCE.** Borrower shall keep the property and all improvements, now and hereafter erected, constantly insured for the benefit of the Lender against loss by fire, windstorm, and such other casualties and contingencies, in the manner and with companies as may be satisfactory to Lender. The amount of the insurance required by this provisions shall be the lesser of either the amount of the loan secured by this Deed of Trust or 100% of the insurable value of the improvements on the Property. Borrower shall purchase such insurance and pay all premiums in a timely manner. In the event that Borrower fails to pay any premium when it is due, then Lender, at its option, may purchase such insurance. Such amounts paid by Lender shall be added to the Note secured by this Deed of Trust and shall be due and payable by Borrower upon demand of the Lender.

4. **TAXES, ASSESSMENTS, CHARGES.** Borrower shall pay all taxes, assessments and charges as may be lawfully levied against the Property before the same shall become past due. In the event that Borrower fails to pay all taxes, assessments and charges as required, then Lender at its option, may pay them and the amount paid shall be added to the Note secured by this Deed of Trust and shall be due and payable by Borrower upon demand of the Lender.

5. **WASTE.** The Borrower covenants that Borrower will keep the Property in as good order, repair and condition, reasonable wear and tear excepted, and that Borrower will not commit or permit any waste on the Property.

6. **WARRANTIES.** Borrower covenants with Trustee and Lender that Borrower is seized of the Property in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Borrower will warrant and defend the title against the lawful claims of all persons whomsoever, except that title to the Property is subject to the following exceptions:

None (or if any, see Exhibit "B" which is attached hereto and incorporated herein by reference)

7. **SUBSTITUTION OF TRUSTEE.** Borrower and Trustee covenant and agree that in case the Trustee, or any successor trustee, shall die, become incapable of acting, renounce this trust, or for other similar or dissimilar reason become unacceptable to Lender, or if the Lender desires to replace the Trustee, then the Lender may appoint, in writing, a trustee to take the place of the Trustee; and upon the probate and registration of the writing, the trustee thus appointed shall succeed to all the rights, powers and duties of the Trustee.

8. **CIVIL ACTIONS.** In the event that the Trustee is named as a party in any civil action as trustee in this Deed of Trust, the Trustee shall be entitled to employ an attorney at law, including himself if he is a licensed attorney, to represent him in said action and the reasonable attorney fees of the Trustee in such action may be paid by the Lender and added to the Note secured by this Deed of Trust, and shall be due and payable by Borrower upon demand of the Lender.

9. **PRIOR LIENS.** Default under the terms of any instrument secured by a lien to which this Deed of Trust is subordinated shall constitute default under this Deed of Trust.

10. **SUBORDINATION.** Any subordination of this lien to additional liens or encumbrances shall be only upon the written consent of the Lender.

In addition to the Loan, Borrower has obtained a loan (the "First Deed of Trust Loan") from (the "Senior Lien Holder") in an original principal amount of \$ _____, which Loan is secured by a first lien on the Property (the "First Deed of Trust"). The documents evidencing or securing the First Deed of Trust Loan are collectively referred to herein as the First Deed of Trust Loan Documents. The Beneficiary agrees that this Deed of Trust is subordinate to the First Deed of Trust dated _____ and recorded in Book _____ at Page _____, Forsyth County Registry.

11. **RIGHT TO INSPECT.** To assure and protect its right in this Deed of Trust and the Property, the Lender shall have right of access and inspection of the Property at reasonable times and with reasonable notice to the Borrower.

12. **CONDEMNATION.** If the Property, or any part of the property, be condemned under any power of eminent domain, or acquired for public use, the damages, proceeds and the consideration for such acquisition, to the extent of the full amount of the indebtedness upon this Deed of Trust and the Note remaining unpaid, are hereby assigned by the Borrower to the Lender and shall be paid to the Lender to be applied by Lender on account of the indebtedness.

13. **WAIVER OF DEFAULT.** No sale of the Property and no forbearance on the part of the Lender and no extension of the time for the repayment of the debt secured hereby given by the Lender shall operate to release, discharge, modify, change or affect the original liability of the Borrower either in whole or in part. The Lender can, in its complete discretion, waive any default, and can waive by written instrument, in advance, any individual actions which might constitute a default.

14. **TRANSFER OF PROPERTY.** Beneficiary shall require immediate payment in full of all sums secured by this Deed of Trust if; all or part of the Property or an interest therein is sold or transferred by Borrower without Beneficiary's prior written consent; or the Property is not occupied by Borrower as his or her principal residence.

15. **NOTICES.** Any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or mailing it by first class mail. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Beneficiary. Any notice to Beneficiary shall be given by first class mail to Beneficiary's address stated herein or any address

Beneficiary designated by notice to Borrower. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Beneficiary when given as provided in this section.

16. **ACCELERATION IN CASE OF BORROWER'S INSOLVENCY.** If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, or under any Federal Statute relating to bankruptcy, insolvency, arrangements or reorganization, or under any state bankruptcy or insolvency act or otherwise admits insolvency or is adjudged insolvent or a receiver is appointed for Borrower or the Property, then Beneficiary may, at Beneficiary's option, declare all of the sums secured by this instrument to be immediately due and payable without prior notice to Borrower. Any attorney fees and other expenses incurred by Beneficiary in connection with Borrower's bankruptcy shall be an additional indebtedness of Borrower secured by this Deed of Trust.

17. **HAZARDOUS MATERIALS.** Borrower warrants that:

- (a) the Property shall be kept free of Hazardous Materials;
- (b) Borrower shall not permit the installation, generation, transportation or release of Hazardous Materials in or on the Property;
- (c) Borrower shall at all times comply with all applicable Environmental Laws affecting the Property and shall keep the Property free and clear of any liens imposed pursuant to any environmental Laws; and
- (d) Borrower shall immediately give Beneficiary oral and written notice in the event that Borrower knows of a violation of these warrants or receives any notice from any governmental agency or other party with regard to Hazardous Materials affecting the Property.

Borrower hereby agrees to indemnify Beneficiary and hold Beneficiary harmless from any losses, liabilities, damages, injuries (including but not limited to attorney fees) and claims incurred or suffered by or asserted against Beneficiary, as a direct or indirect result of any warranty or representation made by Borrower in this paragraph (Hazardous Materials) being false or untrue in any material respect.

For purposes of this Deed of Trust, "Hazardous Material" means petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waster, defined as such in the Environmental Laws.

For purposes of this Deed of Trust, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, and "Superfund" or "Superlien" law, or any other federal, state or local law relating to standards of conduct concerning any petroleum products, and flammable explosives, radioactive materials, asbestos or any materials containing asbestos, and/or hazardous, toxic or dangerous waste.

18. **GOVERNING LAW.** This Deed of Trust is to be governed and construed in accordance with the laws of the State of North Carolina.

19. **SUCCESSORS AND ASSIGNS.** The covenants herein contained shall bind, and the benefits and advantages shall inure to the legal representatives, successors and assigns of the parties hereto.

IN TESTIMONY WHEREOF, Borrower(s) has executed this instrument under seal on the date first above written.

BORROWER:

_____(SEAL)

_____(SEAL)

NORTH CAROLINA, Forsyth County:
I, _____, a Notary Public of the County of _____ and State aforesaid, certify that _____, Grantor(s), personally appeared before me this day and acknowledged the execution of the foregoing instrument. WITNESS my hand and official stamp or seal this _____ day of _____, 2010.

SEAL - STAMP

Notary Public

My commission expires:

The foregoing Certificate(s) of _____ is/are certified to be correct.

REGISTER OF DEEDS FOR FORSYTH COUNTY
By _____
Deputy/Assistant - Register of Deeds