

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 \_\_\_\_\_, 20\_\_\_\_, by and between  
\_\_\_\_\_  
FORSYTH COUNTY (the “Lender”); (the “Borrower”); GLORIA WOODS (the “Trustee”); and

WITNESSETH:

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 that is Thirty (30) years after the date hereof, all as provided in the Note or 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 (\$ 10.00) 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 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 retain his 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 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 provision 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 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, is 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 if the Note remains 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 Lender'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 \_\_\_\_\_, 20\_\_.

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

Exhibit B

**FORSYTH COUNTY HOME  
AFFORDABLE HOME OWNERSHIP PROGRAM  
DECLARATION OF DEED RESTRICTIONS**

STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH

THIS DECLARATION OF DEED RESTRICTIONS (the "Declaration") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (the "Owner") for the benefit of and enforceable by **FORSYTH COUNTY** (the "Lender"):

WHEREAS, Owner is the owner of a certain tract of real property, more particular described as Exhibit "A" attached to Deed of Trust hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Lender has made a loan to Owner in the original principal amount of \$ \_\_\_\_\_ (the "Loan") evidenced by a Promissory Note dated \_\_\_\_\_, 20\_\_ and secured by a Deed of Trust of even date with the Promissory Note; and recorded in Book \_\_\_\_, Page \_\_\_\_ Forsyth County Registry; and

WHEREAS, the Loan was made pursuant to a program (the "Program") and the regulations promulgated pursuant thereto (the "Program Regulations") as more fully described on the Rider #1 attached hereto and incorporated by reference herein; and

WHEREAS, as a condition of making the Loan to Owner, Lender has required and Owner has agreed to restrict the Property as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby represents, covenants, warrants and agrees:

**1. Minimum Program Restrictions.** At all times during the term of this Declaration the Owner and the Project shall comply with all regulations affecting a recipient owner and a qualifying project pursuant to the Program Regulations, as the same may be amended from time to time including, but not limited to the following:

The Project shall qualify as and shall be maintained as "affordable housing" as prescribed in the applicable Program Regulations (24 CFR §§ 92.254, 92.255) based on the Owner's application for Program assistance and shall be suitable for occupancy.

**2. Term.** This Declaration shall remain in full force and effect for a period of \_\_\_\_ years from the date hereof (the "Period of Affordability"), provided however, that the Period of Affordability shall in no event be less than the required minimum period of affordability under the applicable Program Regulations (the "Period of Affordability"). This Declaration shall automatically terminate in the event of transfer of title by foreclosure or by deed in lieu of foreclosure, or if pursuant to 24 CFR § 92.254(a)(5)(i)(A) assignment of an FHA insured mortgage to HUD, subject to automatic revival if, at any time during the remainder of the original Period of Affordability, the owner of record immediately prior to the termination event, or any entity that includes such former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or the Property. It is understood and agreed that the term of this Declaration may extend beyond the term of the Loan or may be terminated by the Lender upon full and satisfactory repayment of the Loan prior to the full term of the Declaration at the sole discretion of the Lender.

**3. Covenants to Run with the Land.** The covenants, reservations and restrictions set forth herein (i) shall be deemed covenants running with the land and, shall pass to and be binding upon Owner, the Owner's heirs, successors and assigns in title to the Property and all subsequent Owners or operators of the Project and (ii) are not merely personal covenants of the Owner. The benefits shall inure to the Lender and any present or prospective tenant of the Project during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of North Carolina to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the Property and which touch and concern the Property, shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, and that an equitable servitude in the form of a negative easement has been created to insure that these restrictions run with the land. Each and every contract, deed or other instrument hereinafter executed covering or conveying the Property or the

Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. If a portion or portions of the Project are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Project. Provided nothing herein shall be deemed to constitute Lender's consent for the transfer, sale or conveyance of the property or any portion thereof.

**4. Compliance Monitoring.** The Owner agrees to permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Lender to inspect any books and records of the Owner regarding the Project which pertain to compliance with this Agreement. The Owner shall submit any other information, documents or certifications requested by Lender which the Lender shall deem reasonably necessary to substantiate the Owner's continuing compliance with the Program, Program Regulations and this Agreement.

**5. Remedies; Enforceability.** The Owner and Lender acknowledge that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with the Program, Program Regulations and additional Lender restrictions. AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING THE LOAN FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE LENDER AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER THE PROGRAM (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO OBTAIN SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

The provisions hereof are imposed upon and made applicable to the Property and shall run with the land and shall be enforceable against Owner or any other person or entity that has or had an ownership interest in the Property at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach of violation hereof at any later time or times.

**6. Amendment.** This Declaration shall not be amended or, except as otherwise provided herein, terminated except by a written instrument, executed by the Lender and the Owner, or their successors and assigns, which amendment shall be duly recorded in the Office of the Register of Deeds for the county in which the Property is located.

**7. Severability.** If any provision hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**8. Construction.** Unless the context clearly requires otherwise, as used in this Declaration, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Declaration and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

**9. Headings.** The titles and headings of the sections of this Declaration have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof, nor be considered or given any effect in construing this Declaration or any provisions hereof, or in ascertaining intent if any question of intent shall arise.

**10. Governing Law.** This Declaration shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, the Owner has executed this Declaration on the date first above written.

*OWNER:*

(SEAL)

RIDER # 1 TO DECLARATION OF RESTRICTIVE COVENANTS

PROGRAM: FORSYTH COUNTY HOME FUNDS

THE OWNER is the owner of a residence (the "Residence") located at:

Street:

City and County of: \_\_\_\_\_, FORSYTH

State of: NORTH CAROLINA

2. Owner understands that Forsyth County is assisting in the financing of the purchase of the above Residence with a second mortgage loan (the "Forsyth County HOME Loan"), made available by Federal funds (said Federal Funds hereinafter collectively referred to as the "HOME Funds"), provided through the provisions of the National Affordable Housing Act of 1990, HOME Investment Partnerships Program, and pursuant to the federal and Forsyth County rules and regulations promulgated thereunder herein said act, program, rules and regulations collectively referred to as the ("HOME Program"), which HOME Program is being administered by Forsyth County. The Owner has received benefits from this financing such as down payment assistance and savings in mortgage loan interest costs. As a result, the Owner is subjecting the Residence to requirements during the Period of Affordability as described in the Declaration.

3. Such Residence is and shall remain a one-family Residence

4. Owner shall occupy such Residence as Owner's principal residence within 60 days after the date of this Declaration and for the entire Period of Affordability.

5. Owner will not use the Residence primarily in a trade or business and will not deduct any portion of the cost of the Residence as a home business expense on Owner's state or federal income tax return(s).

6. Owner will not rent the Residence or any part of the Residence, or use the Residence as an investment property or as a recreational or "second" home.

A LEASE OR RENTAL OF THE RESIDENCE TO ANOTHER MAY RESULT IN LEGAL PROCEEDINGS TO ENFORCE THE REQUIREMENTS OF THE HOME SECOND MORTGAGE; AND,

ANY TRANSFER OF TITLE TO OR POSSESSION OF THE RESIDENCE OR ANY PORTION THEREOF (EXCEPT AS PERMITTED BY FEDERAL LAW) WITHOUT THE PRIOR WRITTEN APPROVAL OF FORSYTH COUNTY, MAY RESULT IN LEGAL PROCEEDINGS TO ENFORCE THE REQUIREMENTS OF THE HOME SECOND MORTGAGE; AND,

A SALE OF THE PROPERTY OR A REFINANCING OF THE FIRST AND SECOND MORTGAGES WITH ANOTHER LENDER WITHIN THE PERIOD OF AFFORDABILITY DOES NOT TERMINATE THE PERIOD OF AFFORDABILITY.

7. RECAPTURE PROVISIONS. In the event Borrower proposes (the "Proposal") to transfer the Residence (the "Sale") (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 the Sale, which is sufficient to pay the Note in full. Forsyth County 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 the fair market value of the Residence, Forsyth County shall have the right to demand that the Note be paid in full.