

Georgia Department of Community Affairs
Community HOME Investment Program
DOWN PAYMENT ASSISTANCE SUBORDINATE DEED TO SECURE DEBT

After recording,
return to:

**SUBORDINATE DEED TO SECURE DEBT,
RESTRICTIVE COVENANT,
AND SECURITY AGREEMENT**
[CHIP Program—Second Priority]

1. **Grantor:** _____,
whose address is _____
_____.
2. **Lender:** _____, whose address is _____
_____.
3. **The Loan:** A loan in the principal amount of \$_____.
4. **Loan Documents:** A promissory note evidencing the Loan (the "Note"), this Deed, and any other document or instrument executed by Grantor or any other person in any way pertaining to the Loan.
5. **Maturity Date:** No later than _____, 20_____.
6. **Senior Lender:** The "Senior Lender" is _____, which has a first priority security deed on the Property and a first priority security interest in the Collateral. Borrower and Lender hereby agree and acknowledge that this Deed and the Note are subordinate to the loan documents, right, title, and interests of Senior Lender.
7. **The Property:** The "Property" is the real property described in **Exhibit A**, together with all improvements, fixtures, equipment, easements, rights-of-way, water rights, other rights, privileges, franchises, tenements, hereditaments, and appurtenances belonging or in any way appertaining to it, including any interest in adjoining road beds (all improvements located on the Property now or in the future shall be referred to as the "Improvements").

8. **Obligations:** This Deed secures the following obligations (collectively, the "Obligations"): (a) the Loan and the Note; (b) all other debts, covenants, agreements, and obligations of Grantor to Lender under the Loan Documents; (c) all future amounts Lender advances to Grantor, on Grantor's behalf, or to protect Lender's interest in the Property or Collateral; (d) all other debts of any kind, owing now or in the future from Grantor to Lender.

9. **Grant:** For good and valuable consideration, Grantor grants and conveys to Lender the Property in **FEE SIMPLE**. This Deed is a security deed passing legal title under Georgia law and is not a mortgage. This Deed is made to secure the timely payment and performance of the Obligations. The lien of any future advances by Lender shall relate back to the date of this Deed.

10. **Warranties:** Grantor warrants the following: (a) Subject only to Senior Lender's interests, Grantor has fee simple title to the Property and has legal title to the Collateral. This warranty of title shall survive Lender's foreclosure of Grantor's interest in the Property and shall be enforceable by any person who may acquire title to the Property by foreclosure or sale under power. (b) Grantor warrants and will defend Lender's title to the Property against the claims of all persons. (c) Except for Senior Lender, Grantor has not granted any other person any interest in the Property or the Collateral.

11. **Restrictive Covenant:** During the entire "Affordability Period" (as defined below), Borrower's family shall continuously use and occupy the Property as its principal residence. Borrower shall not lease or voluntarily or by operation of law sell all or any part of the Property or any interest in the Property during the Affordability Period. Any abandonment of the Property or other breach of this Covenant shall be an "Event of Default." As used in this section, "family" has the same meaning as in the HOME regulations (currently found at 24 CFR §92.1 et seq.) and the "Affordability Period" is the period starting on the date of this Deed and continuing for 6 (six) years. If this covenant is breached before the expiration of the Affordability Period, the Loan amount (or a portion of it) shall be subject to recapture by Lender, as more particularly set forth in the Note.

12. **Other Covenants of Grantor:**

(a) **Insurance.** Until all Obligations are paid in full, Grantor shall obtain and maintain in force fire and casualty insurance insuring the Improvements with Lender named as a loss payee under a mortgagee clause acceptable to Lender. Grantor shall pay all premiums on such insurance on a timely basis. If Grantor fails to pay any insurance premium by its due date, Lender may pay the premium. If Grantor fails to maintain the insurance required by this section, Lender may obtain a replacement policy of insurance. If Lender expends funds under this section, Grantor shall on demand reimburse Lender for the amount expended plus interest at the "Default Rate" (as defined in the Note). Promptly upon request, Grantor shall provide Lender with evidence that it is in compliance with this section. The form, amount, coverages, and insurer for the required insurance under this section are subject to Lender's approval, and Lender may change the requirements, as it deems prudent in its sole discretion. If there is a loss, subject to the rights of Senior Lender, the proceeds of insurance shall be paid to Lender, and Lender may apply the proceeds to the restoration of the Improvements or to the Loan, as Lender determines in its sole discretion.

(b) Taxes. Grantor shall pay when due all taxes, assessments, and other charges against the Property or Collateral (each of which is referred to as a "Tax"). If, however, Grantor is not in default under any Loan Document, Grantor may contest the Tax, but Grantor must do so diligently, in good faith, and without prejudice to Lender. If required by Lender, Grantor shall provide satisfactory security to protect Lender's interest. If Grantor intends to contest any Tax, Grantor shall give Lender advance notice and, upon request, shall provide Lender with copies of all documents relating to the proceeding. If Grantor fails to pay any Tax when due, Lender may pay the Tax. If Lender does so, Grantor shall on demand reimburse Lender for the amount paid plus interest at the Default Rate.

(c) Security Interest. Grantor grants Lender a security interest in any fixtures or equipment affixed to the Property (collectively, the "Collateral"). Grantor shall execute and deliver to Lender or hereby authorizes Lender to file without Grantor's signature all financing statements, continuation statements, or other instruments requested or deemed necessary or desirable by Lender in order to perfect or maintain the perfection of Lender's security interest in the Collateral. Grantor shall replace any Collateral from the Property with comparable property. If an Event of Default occurs, Lender shall have all of the rights and remedies of a secured party under the Georgia Uniform Commercial Code. Any sale pursuant to this section shall be deemed a public sale conducted in a commercially reasonable manner if held contemporaneously with a sale under the power of sale granted in this Deed. Lender need not take possession of the Collateral before a sale, and it shall not be necessary that the Collateral be present at the location of such a sale. Grantor shall be liable for all expenses incurred by Lender in exercising its rights in the Collateral.

(d) Inspection Right. Lender or its agents may inspect the Property upon giving Grantor reasonable advance notice.

(e) Miscellaneous Covenants. Without Lender's prior written consent, Grantor shall not grant or create any easement or right-of-way in the Property or consent to any other restrictive covenants. Grantor shall maintain the Property in good condition and repair and shall not cause or permit any waste of the Property or any nuisance on the Property. Grantor shall comply with all applicable laws relating to the ownership, use, or operation of the Property, including any environmental laws or regulations. Grantor shall keep the Property free from all mechanics' or materialmen's liens, judgments, and other liens and shall remove or bond over any such lien within 20 days of the time a notice of lien is filed or it attaches to the Property, whichever is sooner. Grantor shall appear in and defend any action or proceeding purporting to affect the Property or Lender's interest in the Property and notify Lender of the proceeding.

13. **Special Waivers: GRANTOR EXPRESSLY: (A) ACKNOWLEDGES LENDER'S RIGHT TO ACCELERATE THE DEBT AND THE POWER OF ATTORNEY GIVEN IN THIS DEED TO LENDER TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY GRANTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN THE NOTICE (IF ANY) SPECIFICALLY REQUIRED UNDER THE PROVISIONS OF THIS DEED; (B) WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, THE VARIOUS PROVISIONS OF THE CONSTITUTION FOR THE**

SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING BEFORE LENDER'S EXERCISE OF ANY RIGHT OR REMEDY, EXCEPT ANY NOTICE SPECIFICALLY REQUIRED BY THIS DEED; (C) ACKNOWLEDGES HAVING READ THIS DEED AND HAVING THE OPPORTUNITY TO ASK ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THIS DEED AND ITS PROVISIONS; (D) ACKNOWLEDGES HAVING CONSULTED OR HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL OF GRANTOR'S CHOICE BEFORE EXECUTING THIS DEED; (E) ACKNOWLEDGES THAT ALL WAIVERS OF RIGHTS HAVE BEEN MADE KNOWINGLY, INTENTIONALLY, AND WILLINGLY; AND (F) AGREES THAT GRANTOR'S RIGHT TO NOTICE SHALL BE LIMITED TO THOSE RIGHTS TO NOTICE PROVIDED BY THIS DEED OR THE OTHER LOAN DOCUMENTS OR AS REQUIRED UNDER LAW (IF ANY) AND NO OTHER.

14. **Events of Default:** Each of the following constitutes an Event of Default under this Deed: (a) Grantor's failure to perform or observe any covenant in this Deed, the Note or any other Loan Document; or (b) any warranty or representation by Grantor in this Deed is false in any material respect when made.

15. **Remedies:** If an Event of Default occurs and is not cured within 10 days in the case of a monetary default and 30 days in the case of a non-monetary default, Lender may declare a default under this Deed and, if Lender does so, in addition to any other rights or remedies Lender may have, Lender may exercise one or more of the following remedies:

(a) **Possession.** Lender may enter upon and take possession of the Property (without the appointment of a receiver or application for one) and do all acts which may be desirable in Lender's judgment to preserve the Property's value, its marketability, or the ability to rent the Property or increase the income from it. If Lender takes possession, it may employ an agent or agents to manage, operate, and lease the Property, either in its own name or in the name of Grantor, and may collect the rents and income and apply them to the Obligations (including expenses of operation and collection) in whatever order it chooses in its sole and absolute discretion.

(b) **Specific Performance.** Lender may specifically enforce the provisions of this Deed or any instrument evidencing any part of the Obligations.

(c) **Protective Advances.** In its sole and absolute discretion, Lender may pay any amount deemed appropriate by Lender to protect its interest in the Property and Collateral or cure any Event of Default. The amount of any such payment, with interest from the date of payment at the Default Rate, shall become a part of the Obligations and be due and payable by Grantor to Lender upon demand.

(d) **Acceleration.** Without further notice to or demand upon Grantor, Lender may accelerate the maturity and payment of the entire Obligations, all of which will then become immediately due and payable.

(e) Power of Sale.

(1) Lender may sell the Property at public auction at the usual place for conducting sales at the courthouse in the county where the Property or any part of it is located to the highest bidder for cash, first advertising the time, terms, and place of such sale by publishing a notice of the sale once a week for four consecutive weeks (without regard to the actual number of days) in a newspaper in which sheriff's advertisements are published in the county, and Grantor waives all other notice. Lender may execute and deliver to the purchaser at the sale a sufficient conveyance of the Property in fee simple, which conveyance may contain recitals about the default upon which the execution of the power of sale depends, and the recitals shall be presumptive evidence of due compliance with all acts prerequisite to the sale. Lender and its agents and representatives may bid and purchase at any such sale. At any sale under the power granted in this Deed or a sale pursuant to any judicial order or otherwise, the Property or any part of it may be sold in one parcel and as an entirety or in such parcels, manner, or order as Lender in its sole discretion may elect.

(2) Grantor hereby constitutes and appoints Lender as its agent and attorney-in-fact to make such recitals, sale, and conveyance, and Grantor hereby ratifies and confirms all acts of its attorney-in-fact. Further, Grantor agrees that such recitals shall be binding and conclusive upon Grantor and agrees that the conveyance by Lender under this power of sale (or by deed in lieu of foreclosure, then as to such conveyance) shall bar all right, title, interest, equity of redemption (including all statutory redemption, homestead, dower, and curtesy), and all other exemptions of Grantor in and to the Property.

(3) In case of such a sale, Grantor or any person in possession of all or any part of the Property under Grantor shall become tenants holding over and shall immediately deliver possession to the purchaser at such sale or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over.

(4) The power and agency granted to Lender are coupled with an interest and are irrevocable by death, dissolution, or otherwise and are in addition to any other remedies which Lender may have under this Deed or the other Loan Documents, at law, or in equity.

(5) At its option, Lender is authorized to foreclose Grantor's interest in the Property, subject to any superior rights of any tenants of the Property. The failure to make any such tenant a defendant in any such foreclosure action and to foreclose their interests and rights will not be a defense to any action Lender institutes to collect the Obligations or to collect any deficiency. One or more exercises of the powers granted in this Section shall not extinguish or exhaust the power unless the entire Property is sold or the Obligations are paid in full.

(6) The proceeds of any sale or foreclosure under this Deed shall be applied in the following manner: **First**, to payment of all costs of the sale, including legal fees and disbursements, title charges, advertising, commissions, and transfer taxes and payment of any advances by Lender for expenses and liabilities for which Grantor is responsible under this Deed or any of the other Loan Documents; **Second**, to payment of any other previously unreimbursed amounts expended by Lender under this Deed or any other Loan Document, together with interest at the default rate of interest in the Note; and, **Third**, to payment of the Obligations,

including interest at the default rate in the Note. Lender shall have the right to apply the proceeds of the sale to the Obligations in whatever order it chooses in its sole and absolute discretion. After application of the sale proceeds as provided above, if there is any surplus, Lender shall pay that surplus to Grantor. If there is a deficiency, Grantor shall immediately pay Lender the amount of the deficiency.

(f) Receiver. In any action to foreclose this Deed or if an Event of Default occurs, Lender may apply for the appointment of a receiver for the rents and income from the Property or the Property or both. If Lender does so, Grantor agrees that Lender is entitled to the appointment of such a receiver as a matter of right, without regard to the value of the Property as security for the amounts due Lender or the solvency of any person or entity liable for payment of such amounts. Grantor hereby consents to the appointment of such receiver or receivers, waives any and all notices of and defenses to such appointment, and agrees not to oppose any such application by Lender. The appointment of such receiver, trustee, or other appointee by virtue of any court order, statute, or regulation shall not impair or in any manner prejudice Lender's rights to receive payment of the rents and income from the Property pursuant to other terms and provisions of this Deed or any of the other Loan Documents. Any money advanced by Lender in connection with any such receivership shall be deemed part of the Obligations and shall bear interest at the Default Rate (as defined in the Note). The receiver or his agents shall be entitled to enter upon and take possession of any and all of the Property and Collateral to the same extent and in the same manner as Grantor. The receiver or his agents may exclude Grantor and its agents and employees from the Property and may have, hold, use, operate, manage, repair, maintain, insure, and control the Property. At the option of Lender, such receivership shall continue until full payment of all Obligations or until title to the Property is transferred by foreclosure or sale under this Deed.

(g) Remedies Cumulative. The rights and remedies of Lender under this Deed are separate, distinct, and cumulative of other powers and rights that Lender has in law or equity or under the other Loan Documents. No right or remedy of Lender is exclusive; all of them are cumulative to the remedies for collection of debt, enforcement of rights under security deeds, and preservation of security as provided at law, in equity, or under the other Loan Documents. No act of Lender shall be construed as an election of an exclusive remedy, unless Lender indicates so in writing.

16. **Miscellaneous:**

(a) Notices. All notices required under this Deed shall be in writing and shall be deemed given and received 3 days from the date of deposit in the U.S. mail, certified mail, return receipt requested, postage-prepaid; or when hand delivered by the party, an overnight service (such as FedEx), or a courier service. The addresses set forth in sections 1 and 2 shall be used. Grantor or Lender may change the address to which notices are to be sent by giving the other party 10 business days written notice of the change.

(b) No Waiver of Future Compliance. Any indulgence or departure permitted at any time by Lender from any of the provisions of this Deed or with respect to the Obligations shall not modify the same or waive the requirement of future compliance by Grantor. Lender's failure to

exercise any right or remedy upon an Event of Default shall not waive Lender's rights or remedies for any subsequent Event of Default.

(c) Nomenclature. If there is more than one person signing this Deed, then "Grantor" means and shall include all such persons. The words "Grantor" and "Lender" shall include their respective successors and permitted assigns and all those holding under either of them. Any reference to the "Note" or to any "Loan Document" shall include any amendments, substitutions, renewals, extensions, or replacements to or for it. The word "including" means "including (but not limited to)," unless otherwise specifically stated.

(d) Payment of Expenses. Grantor shall pay all of Lender's expenses actually incurred in any efforts to enforce any provision of this Deed, including reasonable attorney's fees and other legal expenses.

(e) Severability. A determination that any provision of this Deed is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Deed to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstance.

(f) Section Headings. The headings of the sections and paragraphs of this Deed are for convenience only and shall not affect any of the terms of this Deed.

(g) Governing Law. This Deed will be governed by and construed in accordance with Georgia law.

(h) Amendments. This Deed may be amended or modified only by an instrument in writing signed by Lender and Grantor.

(i) Subrogation. Lender shall be subrogated to any encumbrance, lien, claim, or demand, and to all the rights and security for its payment, paid or discharged by Lender under this Deed, and any such subrogation rights shall be additional and cumulative security for Lender.

(j) Time of the Essence. **Time is of the essence of this Deed.**

(k) Revival of Deed. Subject to the remainder of this section, if there is an assignment of an FHA mortgage to HUD or if a person forecloses Grantor's interest in the Property or takes a deed in lieu of foreclosure and such person's mortgage or security deed was prior to this Deed, this Deed and the restrictions and covenants in it (including the affordability restrictions in section 11) shall terminate and no longer affect the Property. Notwithstanding such a foreclosure or deed in lieu of foreclosure, however, this Deed and the covenants and restrictions in it shall be revived and shall remain in force for the remainder of the Affordability Period when and if the owner of record before such foreclosure acquires or obtains any ownership interest in the Property at any time during the Affordability Period.

IN WITNESS WHEREOF, Grantor has duly executed and sealed this Deed on

_____.

Signed, sealed, and delivered
in the presence of:

Unofficial Witness

Notary Public

[Notarial Seal]

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