

The Subrecipient must use an attorney to ensure the Deed is properly prepared.

(Lender's Name)

This Deed of Trust Made this _____ day of _____, 20____, by and between _____, (herein referred to as "Borrower"), and _____ and _____ (herein referred to as "Trustees") , either of whom may act; and _____

(Lender's Name and Address)

(herein referred to as "Lender").

RECITALS

Whereas, the Borrower has executed a deed of trust note of even date (the "Note") payable to the Lender in the amount of _____ dollars (\$_____) and maturing on ____ day of _____, 20____, and evidencing a forgivable loan for rehabilitation of the Property (as defined herein below) intended for occupancy by persons of low- and moderate-income. The Borrower desires to secure to the Lender the payment of certain indebtednesses of the Borrower to the Lender and the performance of certain covenants made by the Borrower to the Lender; **and**

Whereas, the aforementioned deed of trust note of even date (the "Note") reflects that:

_____ dollars (\$_____) of the aforementioned amount is forgiven monthly on each _____ day of _____, 20____, for _____ (_____) months until the forgiven balance is paid in full (**if not applicable, insert N/A in each of the foregoing blanks**).

Now Therefore, Witnessed: That for and in consideration of the provisions of this Deed of Trust (herein referred to as “Deed”) and of \$1.00 cash in hand paid and other valuable consideration, the receipt whereof is hereby acknowledged, the Borrower does hereby grant and convey unto the Trustees, with General Warranty, the real property described with particularity below:

(Property Description)

Together with all buildings, improvements, and fixtures now or hereafter erected thereon, including without limitation all apparatus, equipment, fixtures or articles, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation, or other services, and all items of personal property and any other thing now or hereafter therein or thereon used in connection with the Property including without limitation screens, window shades, storm doors and windows, affixed floor coverings, screen doors, Venetian blinds, awnings, stoves and water heaters (all of which are declared to be a part of said real estate whether physically attached thereto or not); and also together with all easements relating to the Property, as well as any unearned hazard insurance premium with respect to such property, all of which are hereby pledged, assigned, transferred and set over unto the Trustees, whether now due or hereafter to become due. All of the foregoing realty and personalty are hereafter sometimes referred to as the “Property”.

In Trust, However, to secure to the Lender the performance and payment by the Borrower of the indebtednesses described in Paragraphs 1,2 and 3 below, which indebtednesses are sometimes referred to herein as the “Secured Indebtednesses”, and also to secure the due and punctual performance by Borrower of each and every covenant, condition and agreement contained herein, and each and every other obligation, covenant and agreement (sometimes referred to herein as the “Secured Covenants”) of the Borrower to and with the Fund concerning or relating to the Property.

SECURED INDEBTEDNESSES

The Secured Indebtednesses consist of:

1. Indebtednesses under Note. All obligations under the Note, if any, and each note given in substitution for, or upon any renewal or extension of, the Note.

2. Indebtednesses Arising Under Deed of Trust. All indebtednesses to the Lender and to the Trustees which arise under any of the Borrower’s covenants expressly made herein, including fees of their attorneys and agents and other expenses respectively incurred by them in connection with the performance by or assertion of their respective rights and/or duties as set forth in this Deed.

3. Other Indebtednesses. All other indebtednesses of the Borrower to the lender, whether arising out of the Secured Covenants or otherwise, whether now existing or hereafter incurred, whether or not represented or evidenced by negotiable instruments or other writings.

Whenever moneys are to be applied by the Lender to the payment of the Secured Indebtednesses, the Lender shall determine, in its sole discretion, the order and manner in which such moneys are to be applied to the individual indebtednesses secured hereby, unless expressly provided otherwise by this Deed, by other written agreement between the Borrower and the Lender or by law.

ADDITIONAL SECURITY

As additional security for the payment of the Secured Indebtednesses and performance of the Secured Covenants, the Borrower hereby transfers, sets over and assigns to the Lender:

A. All judgments, awards of damages, settlements and compensation made in connection with or in lieu of; (i) any taking of the Property by or under assertion of the power of eminent domain; (ii) any damage to or destruction of the Property by insured casualty; and (iii) any other injury or damages to the Property. The Lender is authorized and empowered (but not required) to collect and receive any such sums and is authorized to apply them in whole or in part to the reduction of the Secured Indebtednesses and/or to the performance of the Secured Covenants.

SECURED COVENANTS

The **Borrower covenants and agrees as follows:**

(1) **Payment and Performance.** Borrower shall pay without demand all Secured Indebtedness and shall fully perform without demand all Secured Covenants, when such payments or performances are due.

(2) **Payment and Discharge of Liens.** Borrower shall pay when due all amounts and shall perform all covenants secured by any deeds of trust recorded prior to this Deed. The Borrower also shall pay, when due, all claims of every kind and nature which might or could become a lien on the Property or any part thereof having priority over the lien of this Deed, and the Borrower shall not at any time create or allow to exist any prior lien on the Property or any part thereof of whatsoever kind or nature other than those specifically approved by the Lender; provided, however, that the following are excepted from the foregoing: (i) liens for taxes and assessments which are not delinquent although by law are given the status of a lien and (ii) such of the above claims as are, and during the time they are, being contested by the Borrower in good faith and by appropriate legal proceedings, but the Borrower shall post such security for the payment of such contested claims as is requested by the Lender.

(3) **Maintenance of the Property.** (i) Borrower shall promptly repair, restore or rebuild any part of the Property that may become damaged or be destroyed while subject to the lien

of this Deed; **(ii)** Borrower shall not commit or suffer waste of the Property; **(iii)** Borrower shall not commit or suffer to be done or exist on or about the Property any condition whereby the Property shall become less valuable; **(iv)** without prior written permission, Borrower shall not remove or demolish the Property; **(v)** Borrower shall comply with all applicable laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property, and not to suffer or permit any violations thereof.

(4) Inspections. The Lender and its agents shall have the right of entry and free access to the Property and right to inspect all buildings, fixtures and equipment in the Property. All books, contracts, records, documents, and other papers relating thereto shall at all times be available at the Property (or such other place as the Lender shall approve) in reasonable condition for proper audit and shall be subject to examination and inspection and copying at any reasonable time by the Lender or its authorized agents. It is understood and agreed that any inspection hereunder by the Lender shall be for the sole benefit and protection of the Lender, and neither the Borrower nor any other party shall be entitled to rely upon such inspection or the results therefrom for any purpose whatsoever, including without limitation the assertion of ; **(a)** any claim or defense with respect to any failure by the Borrower to perform in accordance with the terms of this Deed; or **(b)** any waiver or other modifications of the rights of the Lender or obligations of the Borrower hereunder.

(5) Insurance. Borrower shall maintain insurance for the full replacement cost of the Property, and shall maintain policies of insurance against such other hazards, casualties and contingencies as the Lender may require, with all such policies naming the Lender as the mortgagee and to be in form satisfactory to, and with insurance companies approved by, the Lender. The proceeds of any such insurance shall be applied by the Lender to the restoration of the Property damaged or destroyed, under safeguards satisfactory to the Lender in its sole discretion. Such policies shall, at the option of the Lender, be directed to and held by the Lender without liability. Borrower shall provide to the Lender annual certificates of insurance or endorsements, as applicable, and evidence that insurance policy premiums have been paid when due.

(6) Payment of Escrow Deposits. **(i)** At the option of the Lender, the Borrower shall pay to the Lender, to the extent requested by the Lender, on the dates upon which interest is payable, such amounts as the Lender from time to time estimates are necessary to create and maintain a fund from which to pay before the same become due, all taxes, assessments, liens, hazard insurance premiums, and charges on or against the Property. Payments from said fund for said purposes may be made by the Lender at its discretion even though subsequent owners of the Property may benefit thereby. Funds deposited for one purpose may be disbursed by the Lender for any of the other purposes listed in this Section. **(ii)** Payments pursuant to this Section and payments due under the Note shall be added together and the aggregate amount thereof shall be paid by the Borrower each month in a single payment to be applied by the Lender to the following items in the order set forth:

- A. Amounts required pursuant to subparagraph (i) of this Section.**
- B. Amortization of principal due under the Note.**

Any excess funds accumulated under this Section remaining after payment of the items herein mentioned shall be credited to subsequent monthly payments of the same nature required hereunder. If any such item shall exceed the estimate therefore, the Borrower shall without demand forthwith make good the deficiency.

(7) **Payment of Taxes and Utility Charges.** The Borrower shall pay, when due, all taxes and assessments both general and special, ground rents, fines, penalties, impositions, levies, dues and charges of every type or nature levied upon or assessed against the Property including any personal property included thereon, or upon the interest therein of the Lender or the Trustees hereunder and shall annually provide to the Lender evidence that all such payments have been paid when due.

(8) **Warranty of Title.** The Borrower is lawfully seized of an indefeasible estate in the Property in fee simple, free from encumbrances except as accepted by the Lender, has good right and power to convey the Property, does hereby warrant generally the same, and shall execute such further assurances as may be requisite.

(9) **Attorneys' Fees: Costs of Trustees' Sale.** If the Lender employs an attorney to collect any or all of the Secured Indebtednesses or to foreclose this Deed, or authorizes the Trustees to conduct Trustees' sale proceedings hereunder, then the Trustees and the Lender shall be reimbursed by Borrower, immediately and without demand, for all reasonable costs, charges and attorneys' fees incurred by them or either of them in any such case whether or not suit be commenced, and the same shall be secured hereby.

(10) **Sale or Forbearance.** No sale of the Property, forbearance on the part of the Lender or extension of the time for the payment of the Secured Indebtednesses given by the Lender shall operate to release, discharge, modify, change or affect the original liability of the Borrower herein either in whole or in part.

(11) **Rights of Lender to Remedy Defaults.** If the Borrower defaults in payment of any sums or in the performance of any act required to be paid or performed by the Borrower under the provisions of any of the covenants herein, the Lender may, at its option, make payment thereof or perform any act required of the Borrower, to such extent and in any form or manner deemed expedient by the Lender, and pay any other sums, expenses, and charges, including attorneys' fees which the Lender deems necessary or appropriate therefore. The Lender shall be the sole judge of the validity, priority and amount of any such claims so paid by it and the necessity for the performance by the Lender of any such act which the Borrower was required but failed to perform. The Lender at its option, shall be subrogated to any encumbrance, lien, claim or demand which it has paid under the provisions hereof and any such subrogation rights shall be additional and cumulative security to those set forth in this Deed and as provided by law.

(12) **Repayment to the Lender.** Upon the payment of any sums or performance of any act which the Borrower fails to pay or to perform, the amount so paid or the cost of performing any such act, together with other sums paid or incurred by the Lender (including charges, expenses and attorney's fees deemed necessary or appropriate by the Lender to

effect such payment or to perform such act) immediately and without demand, shall be paid by the Borrower to the Lender. The foregoing amounts shall be secured hereby.

(13) Regulatory Covenants. (a) The Borrower hereby agrees that it shall comply with the provisions of all applicable federal, state, and local laws prohibiting discrimination in housing and that the Borrower, to the extent it has employees, and all contractors and subcontractors engaged in the construction, rehabilitation, or management of the Property, shall provide an equal opportunity for employment without unlawful discrimination. (b) The provisions of this subparagraph (b) shall apply during the period when the Note, if any, is secured by this Deed. (i) The “Rehabilitation” shall be deemed to be the provision or the performance of the labor, services or material necessary to install, construct or complete those improvements in accordance with the work write-up or the plans and specifications for the Property which were submitted to and approved by the Lender (such write-up or plans and specifications are referred to herein as the “Plans”). The Plans are incorporated herein by reference.

(14) Sections 55-59, 59.1 through 59.4 and 55-60, Code of Virginia. The duties, rights and obligations set forth in Section 55-59 of the Code of Virginia shall be deemed to be superseded by the provisions of this Deed. Except as otherwise herein expressly provided, this Deed shall be construed to incorporate the provisions of Sections 55-59.1 through 55-59.4 of the Code of Virginia as now in force and specifically to incorporate herein the following provisions, by short form reference below, of Sections 55-59.2, 55-59.4 and 55-60 of the Code of Virginia:

Exemptions waived.

Renewal, extension or reinstatement permitted.

Any Trustee may act.

Advertisement required: Such advertisement shall be published once a day for three days.

(15) Events of Default. Any one or more of the following events shall constitute a default under this Deed: (a) Default in the payment of any portion of the Secured Indebtednesses or any installment thereof, whether principal, interest, loan repayment or otherwise, when and as the same shall become due and payable, whether at maturity or by acceleration or otherwise; or (b) Default in the due performance or observance of any Secured Covenant; or (c) Misrepresentation or omission by the Borrower of any material fact in the Application, any supplements or amendments thereto or in or with respect to any document or information furnished pursuant thereto. (d) If the Borrower shall be involved in financial difficulties as evidenced : (i) by an admission in writing of its inability to pay its debts generally as they become due; (ii) by filing a petition in bankruptcy or for the adoption of an arrangement under the National Bankruptcy Act (as now or in the future amended) or an admission seeking the relief therein provided; (iii) by making an assignment for the benefit of creditors; (iv) by consenting to the appointment of a receiver or trustee for all or a substantial part of its assets or to the filing of a petition against it under said Bankruptcy Act; (v) by being adjudicated a bankrupt; (vi) by the entry of a court order appointing a receiver or trustee for all or a substantial part of the assets of the Borrower or approving as filed in

good faith a petition filed against it under said Bankruptcy Act; (vii) by the assumption of custody or sequestration by a court of competent jurisdiction of all or substantially all of the assets of the Borrower; (viii) by an attachment for an amount in excess of \$5,000 on any substantial part of the assets of the Borrower which shall not be discharged within thirty (30) days from the making thereof; (ix) by a judgment or decree for the payment of money in excess of \$5,000 being entered against the Borrower, or if an attachment, execution or levy is made upon any of its assets and the judgment, execution or levy, as the case may be, is not discharged or stayed within thirty (30) days from the date of the judgment, attachment, execution or levy as the case may be; or (x) by default under any deed of trust recorded prior to this deed.

(16) Remedies on Default.

(a) Acceleration. In the event of any default hereunder, then all of the Secured Indebtednesses shall, at the option of the Lender, become at once due and payable. No failure by the Lender to exercise such option shall be deemed or construed as a waiver of the right to exercise same in the event of any subsequent or continuing event or default.

(b) Sale. In the event of default hereunder, then at the request of the Lender the Trustees shall sell (and in the case of default of any purchaser, shall resell) the Property at auction for cash, unless the Lender and the Trustees shall agree upon other terms. Such sale shall be held, in the discretion of the Trustee, at the premises or in front of the circuit court building (or at such other place as the Trustees may select) in the city or county in which the Property or the greater part thereof lies, or in the corporate limits of any city surrounded by or contiguous to such county, or in the case of annexed land, in the county of which the land was formerly a part. Such sale shall be made upon such other terms and conditions, in such parcels and at such times as the Trustees shall deem proper. Upon compliance with the terms of such sale, the Trustees shall convey the Property in fee simple to and at the cost of the purchaser thereof (who shall not be required to see to the application of the purchase money) and to hold and apply the proceeds of such sale or sales in the manner provided by law and this Deed.

(c) Entry and Receivership. In the event of any default hereunder and irrespective of whether the Lender accelerates the maturity of all indebtednesses secured hereby, the Lender may exercise the rights and remedies provided herein. In addition, in the event of such default, the Lender or the Trustees, upon the Lender's written demand to the Trustees, without notice may enter upon and take possession of the Property or any part thereof, and perform personally or by their agents any acts which the Lender or the Trustees deem necessary or proper to operate, manage and conserve the Property and/or have a receiver appointed. The expenses (including but not limited to the Lender's, the Trustees' and the receiver's fees, counsel fees, costs and agents' compensation) incurred pursuant to the powers herein contained shall be secured hereby. In the event that the Trustees take possession of the Property pursuant hereto, the Trustees shall after payment of all their costs and expenses, pay to the Lender all rents and other income collected by the Lender or the Trustees, and the Lender shall apply the same to the payment of the Secured Indebtednesses. The right under this subparagraph (c) to enter and take possession of the property and to

manage and operate the same whether by a receiver or otherwise, shall be in addition to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof.

(d) Application of Funds. With respect to funds (including investments therefrom) which are security under this Deed, the Lender shall, in the event of default hereunder, have the right, in addition to all other rights and remedies hereunder, at any time and from time to time to expend all or any part of such funds for the repayment of the Secured Indebtedness or the performance of the Secured Covenants. In the event of a sale under subparagraph (b), any such funds then remaining shall be applied to the Secured Indebtednesses.

(17) Delay. No delay by the Lender or the Trustees in exercising any right or remedy hereunder or otherwise afforded by law shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

(18) Sales and Transfers Prohibited. During the period that the Note is secured by this Deed, the Borrower shall not, without the prior written consent of the Lender, sell assign, convey, or transfer, nor suffer or permit any sale, assignment, conveyance or transfer of all or any part of any interest in the Property or any other security hereunder. Any permitted sale, conveyance or transfer shall be on such terms and conditions as the Lender shall prescribe.

(19) Trustee Substitution. The irrevocable power to appoint a substitute trustee or trustees hereunder is hereby expressly granted to the Lender, to be exercised at any time hereafter, without specifying any reasons therefore by filing for record in the Clerk's office where this instrument is recorded a deed of appointment. Said power of appointment of successor trustee or trustees may be exercised as often as and whenever the Lender deems advisable. The exercise of said power of appointment, no matter how often, shall not be an exhaustion thereof, and upon recording of such deed or deeds of appointment, the trustee or trustees so appointed shall thereupon, without further act or deed of conveyance, succeed to and become fully vested with identically the same title and estate in and to the Property hereby conveyed and with all the rights, powers, trusts and duties of their, his or its predecessor in the trusts hereunder, with like effect as if originally named as trustee or as one of the trustees hereunder.

(20) Notice. Unless required by law, notice of the exercise of any option granted to the Lender herein need not be given, and the Borrower hereby waives, to the extent permitted by law, any notice of the election of the Lender to exercise any such option.

(21) Remedies Cumulative. No remedy herein contained or conferred upon the Lender or the Trustees is intended to be exclusive of any other remedy or remedies afforded by law or by the terms hereof to the Lender or to the Trustees, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

(22) Successors, Assigns, Gender, Number. The covenants and agreements herein contained shall bind, and the benefits and advantages shall inure to the respective heirs,

executors, administrators, successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

23) Security Agreement. This Deed shall constitute a security agreement under the Uniform Commercial Code for the benefit of the Lender as Secured Party. In the event of default hereunder, the Lender may, at its sole election, proceed to enforce any one or more of the rights and remedies (I) as provided in this Deed or any other agreements or instruments relating to the Property, or (ii) as otherwise provided by law.

(24) Headings. The headings herein are inserted only for convenience of referenced and in no way define, limit or describe the scope or intent of this Deed, or of any particular provision thereof, or the proper construction thereof.

Upon the payment of all Secured Indebtednesses and upon the performance of all Secured Covenants, the Borrower covenants to pay the expenses of releasing this Deed.

WITNESS the following signatures and seals

_____(SEAL)

_____(SEAL)

STATE OF VIRGINIA

_____ of _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____.

SIGNATURE:

Notary Public

My commission expires: ____/____/____ Registration number: _____

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