

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 16 February 2011

SUBJECT: Modification Agreements on CDBG Scatter Site Grant

ATTACHMENT(S): Draft Agreements

SUMMARY OF REQUEST:

Community Development Block Grant (CDBG) Scattered Site Housing (SSH) program funds primary residence rehabilitation or emergency repairs for qualified low-income homeowners. The CDBG SSH Grant comes from the federal government and is used to pay for these repairs. The program is solely funded by grant money and does not cost the County any money from the general fund. The cost of repairs or rehabilitation is secured by a forgivable loan in a promissory note or deed of trust.

The County contracts with Benchmark, Inc. who administers the program with assistance and supervision by the Planning Department. Benchmark advertises the program, collects applications from interested parties, and selects the property owners who are eligible to receive the grant funding. Once the owners are selected, the County signs a loan agreement with the individuals which is secured with a Deed of Trust for the amount of the repairs or rehabilitation.

Sometimes, these original agreements have to be modified because the amount of the repairs is greater or less than initially anticipated. Today we have three such modification agreements, two which are decreases from the original, and one (Merrell) that is an increase of almost \$6,000.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the proposed modification agreements under the CDBG Scattered Site Grant.

If the Board is so inclined, the following motion is suggested:

I move that the Board direct staff to sign the Modification Agreements.

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (The "Modification Agreement"), is made and entered into as of the _____ day of _____, 2011, by and between **Francis C. Merrell** hereinafter referred to as "Borrower", **Charles Russell Burrell**, hereinafter referred to as "Trustee", and **Henderson County**, hereinafter called "Lender";

WITNESSETH:

WHEREAS, Borrower has executed a Loan Agreement dated May 21, 2010 in the original principal amount of Forty-Nine Thousand Five Hundred and Seventy-Eight and 00/100 (\$ 49,578.00) Dollars securing a loan from Lender to Borrower in the original principal amount of Forty-Nine Thousand Five Hundred and Seventy-Eight and 00/100 (\$ 49,578.00) Dollars (the "Loan"); and

WHEREAS, the Loan Agreement is secured by a Deed of Trust dated the same day as the Loan Agreement in the original principal amount of Forty-Nine Thousand Five Hundred and Seventy-Eight and 00/100 (\$ 49,578.00) Dollars by and among Borrower, Lender and Trustee (the "Deed of Trust") encumbered certain real property in Henderson County, North Carolina as described therein (the "Property") and recorded in Book 2280, Page 694, of Henderson County Registry; and

WHEREAS, Borrower and Lender desire to modify the Loan Agreement and Deed of Trust to, among other things, adjust the principal amount of the Loan to Fifty-Five Thousand Five Hundred and Thirty-Three and 38/100 (\$ 55,533.38) Dollars and to revise the payment schedule in conformity with the increased loan amount.

NOW, THEREFORE, for mutual promises and in consideration of \$1.00 cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definition of Terms.** All capitalized terms contained herein and not otherwise defined shall be defined as provided in the Loan Agreement and Deed of Trust.
2. **Maximum Amount Permitted.** The maximum principal amount of the loan evidenced by the Loan Agreement and secured by the Deed of Trust, including present and future advances, is adjusted to **Fifty-Five Thousand Five Hundred and Thirty-Three and 38/100 (\$55,533.38)**.
3. **Expenses for Modification.** Borrower acknowledges and agrees that it shall pay the expenses incurred by Lender in connection with the modification effected hereby for attorneys' fees, recordation of this Modification Agreement, and continuation and endorsement of any title insurance.
4. **Agreement of Borrower.** Borrower hereby acknowledges (i) the continued existence of the indebtedness evidenced by the Loan Agreement and secured by the Deed of Trust, and the continuing validity of the lien of the Deed of Trust; (ii) that the acceptance by Lender of this Modification Agreement, is not a waiver by Lender of any rights Lender may possess under the

Loan Agreement, Deed of Trust, or any other documents or instruments evidencing or securing the Loan (collectively, the "Loan Documents"); and (iii) and that the failure by Borrower to fully and promptly perform under the Loan Agreement, Deed of Trust, or any other Loan Document shall entitle Lender to exercise any and all rights granted to Lender under the Loan Agreement, Deed of Trust, or any Loan Document, or otherwise as provided under applicable law.

- 5. Endorsement of Title. Borrower shall ensure that any owner's and lender's policies of this Loan shall be endorsed to reflect the recordation of this Modification Agreement, the continued existence of the lien of the Deed of Trust, and no other exceptions to title except as previously approved by Lender.
- 6. Waiver of Defenses. Borrower represents and warrants to Lender that there are no defenses against the enforcement of the Loan Agreement, Deed of Trust, or any other Loan Document, and Borrower hereby reaffirms its waiver of all defenses against the enforcement of the Loan Agreement, Deed of Trust, and the Loan Documents, as provided in the Loan Agreement.
- 7. Headings. The paragraph headings provided herein are for convenience only and are not intended to define or limit the content of the paragraphs.
- 8. Further Assurances. Each party hereto shall cooperate, and take such further actions and execute and deliver such documents as may be reasonably requested by the other party in order to effectuate the provisions hereof.
- 9. Severability. In the event any term, covenant or condition of this Modification Agreement shall to any extent be invalid or unenforceable, the remainder shall not be affected thereby and each term, covenant or condition shall be valid and enforceable to the full extent permitted by law.
- 10. Successors and Assigns. This Modification Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise provided herein.
- 11. Full Force and Effect. Except as modified hereby, the Loan Agreement and Deed of Trust remain unmodified and in full force and effect.
- 12. Effective Date. The provisions of this Modification Agreement shall be and become effective as the date hereof.
- 13. Governing Law. This Modification Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

| | |
|---------|--------------------------|
| Witness | (Seal) Property Owner |
|---------|--------------------------|

| | |
|---------|--------------------------|
| Witness | (Seal) Property Owner |
|---------|--------------------------|

FOR HENDERSON COUNTY:

_____(Seal)
Selena Coffey, Assistant County Manager,

ATTEST:

Terry Wilson, Clerk to the Board

TRUSTEE:

_____(Seal)
Charles Russell Burrell, County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

J. Carey McLelland, Finance Director

Date

Reviewed as to form by the Office of the County Attorney. _____
Sarah Grace Zambon, Deputy County Attorney

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

PROPERTY OWNER

I, _____, a Notary Public, do hereby certify that
_____ personally appeared before me this
day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the _____ day of _____, _____.

Notary Public

Printed Name

My Commission expires:

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

HENDERSON COUNTY

I, _____, a Notary Public, do hereby certify that
_____ personally appeared before me this day and acknowledged the due execution of
the foregoing instrument.

Witness my hand and seal this the _____ day of _____, _____.

Notary Public

Printed Name

My Commission expires:

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

CLERK TO THE BOARD

I, _____, a Public, hereby certify that _____ personally came before me this day and acknowledged that she is the Clerk to the Board, and that by the authority duly given and as the act of the County, the foregoing instrument was signed in its name by its County Manager, sealed and attested by herself as its Clerk to the Board.

Witness my hand and seal this the _____ day of _____, _____.

Notary Public

Printed Name

My Commission expires:

STATE OF NORTH CAROLINA
COUNTY OF Henderson

TRUSTEE

I, _____, a Notary Public, do hereby certify that _____, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the _____ day of _____, _____.

Notary Public

Printed Name

My Commission expires:

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (The "Modification Agreement"), is made and entered into as of the _____ day of _____, 2011, by and between Mary R. Lynch hereinafter referred to as "Borrower", Charles Russell Burrell, hereinafter referred to as "Trustee", and **Henderson County**, hereinafter called "Lender";

WITNESSETH:

WHEREAS, Borrower has executed a Loan Agreement dated April 23, 2010 in the original principal amount of Thirty-Nine Thousand Five Hundred and Fifty-Seven and 00/100 (\$ 39,557.00) Dollars securing a loan from Lender to Borrower in the original principal amount of Thirty-Nine Thousand Five Hundred and Fifty-Seven and 00/100 (\$ 39,557.00) Dollars (the "Loan"); and

WHEREAS, the Loan Agreement is secured by a Deed of Trust dated the same day as the Loan Agreement in the original principal amount of Thirty-Nine Thousand Five Hundred and Fifty-Seven and 00/100 (\$ 39,557.00) Dollars by and among Borrower, Lender and Trustee (the "Deed of Trust") encumbered certain real property in Henderson County, North Carolina as described therein (the "Property") and recorded in Book 2273, Page 459, of Henderson County Registry; and

WHEREAS, Borrower and Lender desire to modify the Loan Agreement and Deed of Trust to, among other things, adjust the principal amount of the Loan to Thirty-Eight Thousand Four Hundred and Thirty-Six and 35/100 (\$ 38,436.35) Dollars and to revise the payment schedule in conformity with the decreased loan amount.

NOW, THEREFORE, for mutual promises and in consideration of \$1.00 cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Definition of Terms. All capitalized terms contained herein and not otherwise defined shall be defined as provided in the Loan Agreement and Deed of Trust.
2. Maximum Amount. The maximum principal amount of the loan evidenced by the Loan Agreement and secured by the Deed of Trust, including present and future advances, is adjusted to **Thirty-Eight Thousand Four Hundred and Thirty-Six and 35/100** (\$ **38,436.35**).
3. Expenses for Modification. Borrower acknowledges and agrees that it shall pay the expenses incurred by Lender in connection with the modification effected hereby for attorneys' fees, recordation of this Modification Agreement, and continuation and endorsement of any title insurance.
4. Agreement of Borrower. Borrower hereby acknowledges (i) the continued existence of the indebtedness evidenced by the Loan Agreement and secured by the Deed of Trust, and the continuing validity of the

lien of the Deed of Trust; (ii) that the acceptance by Lender of this Agreement, is not a waiver by Lender of any rights Lender may possess under the Loan Agreement, Deed of Trust, or any other documents or instruments evidencing or securing the Loan (collectively, the "Loan Documents"); and (iii) and that the failure by Borrower to fully and promptly perform under the Loan Agreement, Deed of Trust, or any other Loan Document shall entitle Lender to exercise any and all rights granted to Lender under the Loan Agreement, Deed of Trust, or any Loan Document, or otherwise as provided under applicable law.

5. Endorsement of Title. Borrower shall ensure that any owner's and lender's policies of this Loan shall be endorsed to reflect the recordation of this Modification Agreement, the continued existence of the lien of the Deed of Trust, and no other exceptions to title except as previously approved by Lender.
6. Waiver of Defenses. Borrower represents and warrants to Lender that there are no defenses against the enforcement of the Loan Agreement, Deed of Trust, or any other Loan Document, and Borrower hereby reaffirms its waiver of all defenses against the enforcement of the Loan Agreement, Deed of Trust, and the Loan Documents, as provided in the Loan Agreement.
7. Headings. The paragraph headings provided herein are for convenience only and are not intended to define or limit the content of the paragraphs.
8. Further Assurances. Each party hereto shall cooperate, and take such further actions and execute and deliver such documents as may be reasonably requested by the other party in order to effectuate the provisions hereof.
9. Severability. In the event any term, covenant or condition of this Modification Agreement shall to any extent be invalid or unenforceable, the remainder shall not be affected thereby and each term, covenant or condition shall be valid and enforceable to the full extent permitted by law.
10. Successors and Assigns. This Modification Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise provided herein.
11. Full Force and Effect. Except as modified hereby, the Loan Agreement and Deed of Trust remain unmodified and in full force and effect.
12. Effective Date. The provisions of this Modification Agreement shall be and become effective as the date hereof.
13. Governing Law. This Modification Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

Witness

_____(Seal)
Property Owner

Witness

_____(Seal)
Property Owner

FOR HENDERSON COUNTY:

_____(Seal)
Selena Coffey, Assistant County Manager,

ATTEST:

Terry Wilson, Clerk to the Board

TRUSTEE:

_____(Seal)
Charles Russell Burrell, County Attorney

_____ personally came before me this day and acknowledged that she is the Clerk to the Board, and that by the authority duly given and as the act of the County, the foregoing instrument was signed in its name by its County Manager, sealed and attested by herself as its Clerk to the Board.

Witness my hand and seal this the _____ day of _____, _____.

Notary Public

Printed Name

My Commission expires:

STATE OF NORTH CAROLINA
COUNTY OF Henderson

TRUSTEE

I, _____, a Notary Public, do hereby certify that _____, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the _____ day of _____, _____.

Notary Public

Printed Name

My Commission expires:

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (The "Modification Agreement"), is made and entered into as of the _____ day of _____, 2011, by and between Martha Buchanan hereinafter referred to as "Borrower", Charles Russell Burrell, hereinafter referred to as "Trustee", and Henderson County, hereinafter called "Lender";

WITNESSETH:

WHEREAS, Borrower has executed a Loan Agreement dated January 14, 2010 in the original principal amount of Thirty-Seven Thousand Seven Hundred and Sixty-One and 00/100 (\$ 37,761.00) Dollars securing a loan from Lender to Borrower in the original principal amount of Thirty-Seven Thousand Seven Hundred and Sixty-One and 00/100 (\$ 37,761.00) Dollars (the "Loan"); and

WHEREAS, the Loan Agreement is secured by a Deed of Trust dated the same day as the Loan Agreement in the original principal amount of Thirty-Seven Thousand Seven Hundred and Sixty-One and 00/100 (\$ 37,761.00) Dollars by and among Borrower, Lender and Trustee (the "Deed of Trust") encumbered certain real property in Henderson County, North Carolina as described therein (the "Property") and recorded in Book 2256, Page 103, of Henderson County Registry; and

WHEREAS, Borrower and Lender desire to modify the Loan Agreement and Deed of Trust to, among other things, adjust the principal amount of the Loan to Thirty-Five Thousand Eight Hundred and Forty-Five and 00/100 (\$ 35,845.00) Dollars and to revise the payment schedule in conformity with the decreased loan amount.

NOW, THEREFORE, for mutual promises and in consideration of \$1.00 cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Definition of Terms. All capitalized terms contained herein and not otherwise defined shall be defined as provided in the Loan Agreement and Deed of Trust.
2. Maximum Amount. The maximum principal amount of the loan evidenced by the Loan Agreement and secured by the Deed of Trust, including present and future advances, is adjusted Thirty-Five Thousand Eight Hundred and Forty-Five and 00/100 (\$ 35,845.00).
3. Expenses for Modification. Borrower acknowledges and agrees that it shall pay the expenses incurred by Lender in connection with the modification effected hereby for attorneys' fees, recordation of this Modification Agreement, and continuation and endorsement of any title insurance.
4. Agreement of Borrower. Borrower hereby acknowledges (i) the continued existence of the indebtedness evidenced by the Loan Agreement and secured by the Deed of Trust, and the continuing validity of the

lien of the Deed of Trust; (ii) that the acceptance by Lender of this Agreement, is not a waiver by Lender of any rights Lender may possess under the Loan Agreement, Deed of Trust, or any other documents or instruments evidencing or securing the Loan (collectively, the "Loan Documents"); and (iii) and that the failure by Borrower to fully and promptly perform under the Loan Agreement, Deed of Trust, or any other Loan Document shall entitle Lender to exercise any and all rights granted to Lender under the Loan Agreement, Deed of Trust, or any Loan Document, or otherwise as provided under applicable law.

5. Endorsement of Title. Borrower shall ensure that any owner's and lender's policies of this Loan shall be endorsed to reflect the recordation of this Modification Agreement, the continued existence of the lien of the Deed of Trust, and no other exceptions to title except as previously approved by Lender.
6. Waiver of Defenses. Borrower represents and warrants to Lender that there are no defenses against the enforcement of the Loan Agreement, Deed of Trust, or any other Loan Document, and Borrower hereby reaffirms its waiver of all defenses against the enforcement of the Loan Agreement, Deed of Trust, and the Loan Documents, as provided in the Loan Agreement.
7. Headings. The paragraph headings provided herein are for convenience only and are not intended to define or limit the content of the paragraphs.
8. Further Assurances. Each party hereto shall cooperate, and take such further actions and execute and deliver such documents as may be reasonably requested by the other party in order to effectuate the provisions hereof.
9. Severability. In the event any term, covenant or condition of this Modification Agreement shall to any extent be invalid or unenforceable, the remainder shall not be affected thereby and each term, covenant or condition shall be valid and enforceable to the full extent permitted by law.
10. Successors and Assigns. This Modification Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise provided herein.
11. Full Force and Effect. Except as modified hereby, the Loan Agreement and Deed of Trust remain unmodified and in full force and effect.
12. Effective Date. The provisions of this Modification Agreement shall be and become effective as the date hereof.
13. Governing Law. This Modification Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

Witness

_____(Seal)
Property Owner

Witness

_____(Seal)
Property Owner

FOR HENDERSON COUNTY:

_____(Seal)
Selena Coffey, Assistant County Manager,

ATTEST:

Terry Wilson, Clerk to the Board

TRUSTEE:

_____(Seal)
Charles Russell Burrell, County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

J. Carey McLelland, Finance Director

Date

Reviewed as to form by the Office of the County Attorney. _____
Sarah Grace Zambon, Deputy County Attorney

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

PROPERTY OWNER

I, _____, a Notary Public, do hereby certify that
_____ personally appeared before me this
day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the _____ day of _____, _____.

Notary Public

Printed Name

My Commission expires:

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

HENDERSON COUNTY

I, _____, a Notary Public, do hereby certify that
_____ personally appeared before me this day and acknowledged the due execution of
the foregoing instrument.

Witness my hand and seal this the _____ day of _____, _____.

Notary Public

Printed Name

My Commission expires:

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

CLERK TO THE BOARD

I, _____, a Public, hereby certify that
_____ personally came before me this day and acknowledged that she is the Clerk to
the Board, and that by the authority duly given and as the act of the County, the foregoing instrument was signed in its name by its
County Manager, sealed and attested by herself as its Clerk to the Board.

Witness my hand and seal this the _____ day of _____, _____.

Notary Public

Printed Name

My Commission expires:

STATE OF NORTH CAROLINA
COUNTY OF Henderson

TRUSTEE

I, _____, a Notary Public, do hereby certify that
_____, Trustee, personally appeared before me this day and acknowledged the due
execution of the foregoing instrument.

Witness my hand and seal this the _____ day of _____, _____.

Notary Public

Printed Name

My Commission expires:
