

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY

### BOARD OF COMMISSIONERS

**MEETING DATE:** February 4, 2013  
**PRESENTER:** Sarah Zambon  
**SUBJECT:** Modification Agreements on CDBG Talley Drive Grant  
**ATTACHMENT(S):** Draft Agreements

#### **SUMMARY OF REQUEST:**

Community Development Block Grant (CDBG) program funds rehabilitation and reconstruction for qualified low-income homeowners. The CDBG Grant comes from the federal government and is used to pay for these repairs and construction. 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 program is advertised and applications are collected from interested parties. Then property owners who are eligible are selected to receive 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 differs from the original anticipated amount. Today we have two such modification agreements, one modification for a sum of approximately \$1600 more than the original estimate and the other for approximately \$2900 more. Again, this additional cost was paid for with grant funds and did not cost the County anything.

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 Talley Drive Grant.

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

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

Prepared By Sarah Zambon, Deputy County Attorney  
Return to : Henderson County Office of County Attorney, 1 Historic Courthouse Sq, Hendersonville, NC 2892

**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 \_\_\_\_\_, 201\_\_\_\_, by and between Lila Suber 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 October 1, 2012 in the original principal amount of Twenty-nine thousand, nine hundred and seventy two dollars and 00/100 (\$ 29,972.00 ) Dollars securing a loan from Lender to Borrower in the original principal amount of Twenty-nine thousand, nine hundred and seventy two dollars and 00/100 (\$ 29,972.00 ) 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 Twenty-nine thousand, nine hundred and seventy two dollars and 00/100 (\$ 29,972.00 )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 2502, Page 253, 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-One Thousand Five Hundred and Fifty Seven Dollars and 00/100 (\$31,557.00) 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-One Thousand Five Hundred and Fifty Seven Dollars and 00/100 (\$31,557.00).
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.

[Signature]  
Parker Sloan, Witness

Lila Suber (Seal)  
Property Owner

STATE OF NORTH CAROLINA  
PROPERTY OWNER  
COUNTY OF HENDERSON

WITNESS FOR

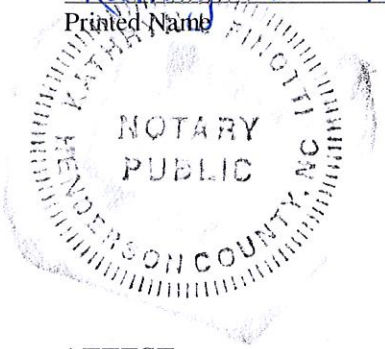
I, Kathryn L. Finotti, a Notary Public, do hereby certify that Parker Sloan personally appeared before me this day and certified to me under oath or by affirmation that he is not a grantee or beneficiary of the transaction, signed the document as a subscribing witness and witnessed Lila Suber sign the foregoing document..

Witness my hand and seal this the 23rd day of January, 2013.

Kathryn L. Finotti  
Notary Public

My Commission expires: 3-23-13

Kathryn L. Finotti  
Printed Name



**FOR HENDERSON COUNTY:**

\_\_\_\_\_  
Steve Wyatt, County Manager (Seal)

**ATTEST:**

\_\_\_\_\_  
Terry Wilson, Clerk to the Board

**TRUSTEE:**

\_\_\_\_\_  
Charles Russell Burrell, County Attorney (Seal)

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

J. Carey McLelland  
J. Carey McLelland, Finance Director

Date \_\_\_\_\_

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

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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  
BOARD  
COUNTY OF HENDERSON

CLERK TO THE

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  
TRUSTEE  
COUNTY OF Henderson

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:

\_\_\_\_\_

Prepared By Sarah Zambon, Deputy County Attorney  
Return to : Henderson County Office of County Attorney, 1 Historic Courthouse Sq, Hendersonville, NC 2892

**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 \_\_\_\_\_, 201\_\_\_\_, by and between Samuel Mills 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 September 25, 2012 in the original principal amount of Eighty-One Thousand, seven hundred and forty dollars (\$81,740) securing a loan from Lender to Borrower in the original principal amount of Eighty-One Thousand, seven hundred and forty dollars (\$81,740) 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 Eighty-One Thousand, seven hundred and forty dollars (\$81,740) 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 2502, Page 257, 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 Eighty Four Thousand Six-Hundred and Fifteen Dollars(\$84,615.00) 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 Eighty Four Thousand Six-Hundred and Fifteen Dollars(\$84,615.00).
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.

Parker Sloan  
Parker Sloan, Witness  
~~Owner~~

Samuel R. Mills  
Samuel R. Mills, Property

STATE OF NORTH CAROLINA  
PROPERTY OWNER  
COUNTY OF HENDERSON

WITNESS FOR

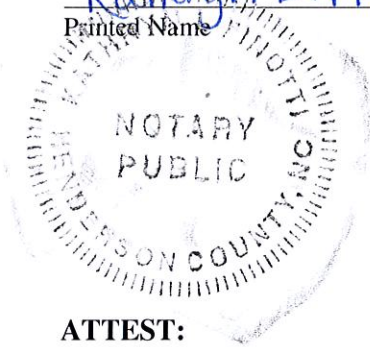
I, Kathryn L. Finotti, a Notary Public, do hereby certify that Parker Sloan personally appeared before me this day and certified to me under oath or by affirmation that he is not a grantee or beneficiary of the transaction, signed the document as a subscribing witness and witnessed Sam Mills sign the foregoing document..

Witness my hand and seal this the 23rd day of January, 2013.

Kathryn L. Finotti  
Notary Public

My Commission expires: 3-23-13

Kathryn L. Finotti  
Printed Name



FOR HENDERSON COUNTY:

\_\_\_\_\_(Seal)  
Steve Wyatt, 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  
J. Carey McLelland, Finance Director

Date

Reviewed as to form by the Office of the County Attorney.

Sarah Grace Zambon  
Sarah Grace Zambon, Deputy County Attorney

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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

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

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

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

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

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name