

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY

### BOARD OF COMMISSIONERS

**MEETING DATE:** 6 June 2016

**SUBJECT:** Pilgrim HOME loan program document request

**PRESENTER:** Charles Russell Burrell

**ATTACHMENT(S):** Loan documents

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

In 2000, a "HOME" program loan was made, as shown on the attached documents. A correction of promissory note was attempted in October of 2002, also as shown. This document was incorrectly executed and acknowledged.

From available records, in the 1990s, "HOME" loans did not automatically terminate if the recipient lived in the property which was improved by and the collateral for the loan for a period of ten years. This feature changed before this loan was made, but the paperwork prepared by outside counsel evidently was not corrected from previous forms. When, two years after the loan was originally made an attempt was made at such correction, it was not properly executed or acknowledged by the County.

Notwithstanding all those facts, the recipient of the loan has evidently in fact resided in the property for a period of greater than ten years. This would allow the lien on the property represented by the County's deed of trust to be withdrawn (noted on records as "Satisfied"), and the loan permanently forgiven.

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

#### **BOARD ACTION REQUESTED:**

Authorization for execution by staff of the Satisfaction of Security Instrument, attached to this agenda item.

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

***I move that the Board direct staff to properly execute and acknowledge the Satisfaction of Security Instrument in this matter.***

PREPARED BY AND RETURN TO:

Van Winkle, Buck, Wall, Starnes & Davis, P.A.  
422 South Main Street, Hendersonville, NC 28792 (MMT)

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STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

CORRECTION OF PROMISSORY NOTE

**THIS CORRECTION OF PROMISSORY NOTE**, made and entered into this 22<sup>nd</sup> day of October, 2002, by and between Carolyn N. Pilgrim, ("Grantor"); Michael M. Thompson, ("Trustee"); and Henderson County, ("Beneficiary").

WITNESSETH:

**WHEREAS**, Grantor executed a promissory note in the amount of \$28,375.00, ("Note") to Beneficiary which is secured by a Deed of Trust to Trustee dated September 5, 2000, and recorded in Deed of Trust Book 911, at Page 264, of the Henderson County, North Carolina Register's Office ("Deed of Trust"); and

**WHEREAS**, the Deed of Trust places a lien on, as collateral to the Note, the real property described on Exhibit A, attached hereto; and,

**WHEREAS**, the parties are desirous of correcting the Note to modify the term/maturity date from thirty (30) years to ten (10) years;

**NOW, THEREFORE**, Grantor, Trustee, and Beneficiary agree to correcting the Note as follows:

1. The term of the loan shall be from the date of this Note, September 5, 2000 until the earlier of (i) the date the Principal Amount is paid in full or (ii) the first day of the month first occurring ten (10) years after the recordation date.

In all other respects, the Note and Deed of Trust remain unchanged.

**TO HAVE AN TO HOLD** the Real Property with all privileges and appurtenances thereunto belonging to Trustee, their successors and assigns forever, for the benefit of Beneficiary and in accordance with the terms of the Deed of Trust, as amended by this Modification.

IN WITNESS WHEREOF, the Parties hereunto have placed their hands and seals, and if corporate, have caused this Agreement to be executed by its duly authorized Corporate Officers with the Corporate Seal affixed.

GRANTOR:

Carolyn N. Pilgrim (Seal)  
CAROLYN N. PILGRIM

BENEFICIARY: HENDERSON COUNTY

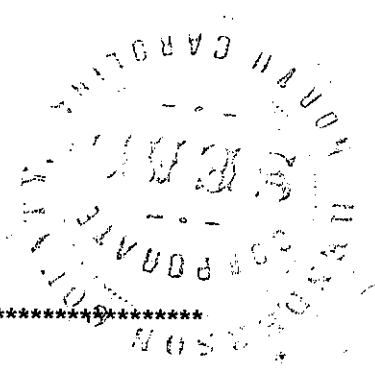
By: Paul [Signature]  
ASSISTANT County Manager

Attest:

By: Elizabeth W. Corn  
County Clerk  
(Corporate Seal)

TRUSTEE:

Michael M. Thompson (Seal)  
MICHAEL M. THOMPSON



STATE OF NORTH CAROLINA  
COUNTY OF Transylvania

I, Martha M. Buchanan, a Notary Public of the State and County aforesaid, do hereby certify that **CAROLYN N. PILGRIM**, Grantor, personally appeared before me this day and acknowledge the execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 22 day of October, 2002.

My Commission Expires:  
06-24-2003

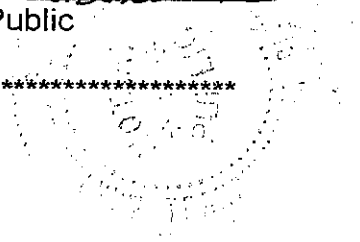
Martha M. Buchanan  
Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF Transylvania

I, Martha M. Buchanan, a Notary Public of the State and County aforesaid, do hereby certify that **MICHAEL M. THOMPSON**, Trustee, personally appeared before me this day and acknowledge the execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 22 day of October, 2002.

My Commission Expires:  
06-24-2003

Martha M. Buchanan  
Notary Public





LENDER:

*[Signature]*  
\_\_\_\_\_  
Henderson County

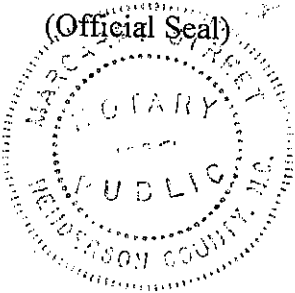
By: David Nicholson *Selena Coffey*  
Asst County Manager

*Elizabeth W. Corn*  
\_\_\_\_\_  
(Title) Clerk to the Board

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, Margaret Street, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is Clerk to the Board of Commissioners of Henderson County, a municipal corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Chairman of the Board of Commissioner, sealed with its corporate seal, and attested by herself as its Clerk.

Witness my hand and official seal, this the 16<sup>th</sup> day of October, 2007.



*Margaret Street*  
\_\_\_\_\_  
Notary Public

*My Commission expires - Sept. 17, 2012*

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, Martha M Buchanan a Notary Public in and for said County and State, certify that Carolyn N. Pilgrim, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal this 22 day of October, 2002.

*Martha M Buchanan*  
\_\_\_\_\_  
Notary Public

My Commission Expires: 06/24/2003

8911 P 264

Prepared by and return to: Van Winkle Law Firm, 422 South Main Street, Hendersonville, NC  
Michael M. Thompson

STATE OF NORTH CAROLINA

DEED OF TRUST

COUNTY OF HENDERSON

THIS DEED OF TRUST, executed this 5th day of September, 2000 by and between  
Carolyn N. Pilgrim, Unmarried ("Borrower"); Michael M. Thompson, ("Trustee"); and the  
County of Henderson ("Lender").

WITNESSETH:

THAT WHEREAS, the Lender agrees to advance to the Borrower the sum of Twenty  
Eight Thousand Three Hundred Seventy Five Dollars and no/100 (\$ 28,375.00) under the HOME  
Investment Partnerships Act, evidenced by the Promissory Note ("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, the Loan is subject to the terms and conditions for use of the property  
as set forth in the Note and this Deed of Trust;

AND WHEREAS, the Loan shall be secured by the conveyance of the Land described in  
this Deed of trust;

NOW, THEREFORE, in consideration of the promises 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 Hendersonville  
Township, Henderson County, North Carolina, as described as follows:

As described on Exhibit "A" attached hereto and incorporated herein by reference

together with all heating, plumbing and lighting fixtures and equipment now or hereafter attached  
to or used in connection with the premises ("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.

9/00

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 none 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 then be provided by law, and upon sale and any resale 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 retains 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 commission shall be five percent (5%) of the gross proceeds of sale.

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; however, the maturity date of this indebtedness is no later than pursuant to the terms of the Note.
2. **RESALE PROVISIONS** In the event Borrower proposes ("Proposal") to transfer ("Sale") the Property (other than pursuant to an approved Assumption, as defined in the Note), at a price that will not generate a sum ("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, Lender shall have a Right of First Refusal to purchase the property at the price contained in the Proposal exercisable prior to the expiration of forth-five (45) days after Lender receives a copy of the Proposal. In the event Lender fails to exercise this right, and Borrower transfers the Property pursuant to Proposal, 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 the 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 the Lender. The amount of the insurance required by this provision shall be at least the amount of the balance of this loan. Borrower agrees to pay all premiums in a timely manner. In the event Borrower fails to pay any premium when it is due, then the Lender, at its option,

may purchase such insurance. Such amounts paid by the 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 the 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 as good order, repair and condition, reasonable wear and tear excepted, and that Borrower will not commit or permit any waste on 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: Superior Deeds of Trust of Record.
7. **SUBSTITUTION OF TRUSTEE** Borrower and trustee covenants and agree that in case the Trustee, or any successor trustee, shall die, become incapable to acting, renounce this trust, or for other similar or dissimilar reason become unacceptable to the 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, power 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's fee 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 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.

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, be 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 indebtedness upon this Deed of Trust and the Note remaining unpaid, are hereby assigned by the Borrower to the Lender and shall be paid to the Lender to be applied by the 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, waive any default, and can waive by written instrument, in advance, any individual actions which might constitute a default.
14. **TRANSFER OF PROPERTY** Lender 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 by Lender. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender 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 reorganizations, or under any state then Lender may, at Lender's option, declare all of sums secured by this instrument to be immediately due and payable without prior notice to Borrower. Any attorney's fees and other expenses incurred by Lender 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:
- (i) the Property shall be kept free of Hazardous Materials;
  - (ii) Borrower shall not permit the installation, generation, transportation or release of Hazardous Materials in or on the Property;



B 9 1 1 P 2 6 8

- (iii) 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;
- (iv) Borrower shall immediately give Lender 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 Lender and hold harmless from any losses, liabilities, damages, injuries (including but not limited to attorney's fees) and claims incurred or suffered by or asserted against Lender, 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 aspect.

For purposes of this Deed of Trust, "Hazardous Materials" means petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, 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 any flammable explosives, radioactive materials, asbestos or any materials contain 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.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK PLEASE SEE FOLLOWING PAGES FOR SIGNATURES AND NOTARY ACKNOWLEDGMENTS**

IN TESTIMONY WHEREOF, Borrower(s) has executed this instrument under seal on the date first above written.

BORROWERS:

Carolyn N. Pilgrim (SEAL)  
CAROLYN N. PILGRIM, UNMARRIED  
\_\_\_\_\_  
(SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, TERRI ECKERSTROM, a Notary Public of the County and State aforesaid, certify that CAROLYN N. PILGRIM, UNMARRIED, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Sworn to and subscribed to before me. Witness my hand and official stamp or seal, this 5th day of September, 2000.

My commission expires: 5/23/2004

TERRI ECKERSTROM  
Notary Public  
TERRI ECKERSTROM  
Notary Public  
Buncombe County  
State of North Carolina

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Sworn to and subscribed to before me. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of August, 1999.

My commission expires: \_\_\_\_\_

Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

The Foregoing Certificate of TERRI ECKERSTROM is certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.

NEDRA W. MOLES REGISTER OF DEEDS FOR HENDERSON COUNTY.

BY: Nedra W. Moles REGISTER OF DEEDS.

K:\22-MTM\11767-002\Deed of Trust.wpd

Filed and recorded in the Register of Deeds Office for Henderson County, N.C. on 5th day of Sept 2000 at 3:15 o'clock P.M. in Book 911 at page 264.

Nedra W. Moles  
Register of Deeds

Deed of Trust - Page 6

By: Patricia B. Higgins asst.

0911 P270

**EXHIBIT A**

**TRACT ONE:**

**BEGINNING** on a stake in the line of the former Jane Williams (now known as Robinson) property, said stake being located at the southwestern corner of the Walter Green lot described in Deed Book 103, at Page 212, Henderson County Registry, and run thence from said beginning point with the line of the Jane Williams property South 4 degrees West 50 feet to a stake, the northwest corner of the Robert Quinn lot; thence with the line of the Quinn lot South 86 degrees East 110 feet to a stake, northeastern corner of the Robert Quinn lot in the line of the John Penson property described in Deed Book 116, at Page 128; thence with the line of said Penson property North 4 degrees East 50 feet to a stake in the line of the Walter Green lot (referred to above); thence with the line of the Walter Green lot North 86 degrees West 110 feet to the **BEGINNING**.

**TRACT 2:**

**BEGINNING** at the northeast corner of the Oakdale School property, also being the southeast corner of S.B. Wheeler's line, thence North 86 degrees West 200 feet to a stake; thence with Jane Williams line South 4 degrees West 45 feet to an iron pin; thence South 86 degrees East 200 feet to an iron pin on Curry Street; thence with Curry Street North 4 degrees East 55 feet to the **POINT AND PLACE OF BEGINNING**.

**BEING THE** same property described in Deed recorded in Deed Book 976, at Page 376, Henderson County Registry.

**THIS CONVEYANCE IS MADE SUBJECT TO** easements, restrictions, rights of way of record and utility lines which may be in existence over or under the subject property.

Record & Return To: Carolyn N. Pilgrim (mailing address : \_\_\_\_\_)

**SATISFACTION OF SECURITY INSTRUMENT**

(G.S. §45-36.10; G.S. §45-37(a)(7))

The undersigned is now the Secured Creditor in the security instrument identified as follows:

Type of Security Instrument: Deed of Trust

Original Grantor(s): Carolyn N. Pilgrim, Unmarried

Original Secured Party: County of Henderson

Recorded in: Deed Book 911, Page 264, Office of the Register of Deeds for Henderson County, North Carolina.

This satisfaction terminates the effectiveness of the security instrument.

Date: \_\_\_\_\_

**BENEFICIARY:**

**County of Henderson**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

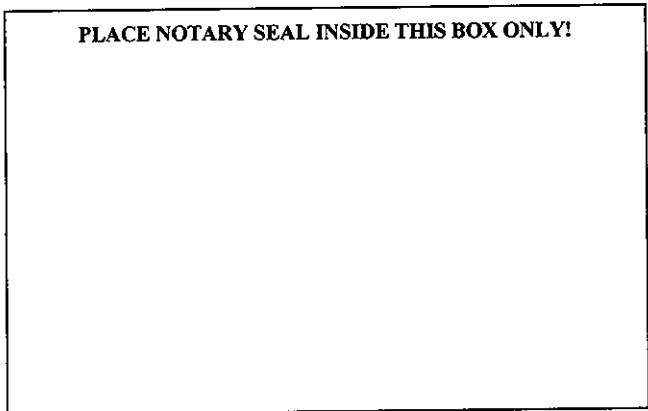
I certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose state therein and in the capacity indicated:

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(Printed Name of Notary)  
My Commission Expires: \_\_\_\_\_



NORTH CAROLINA

HENDERSON COUNTY

**DECLARATION OF DEED RESTRICTIONS**  
**HOME Program**

THIS DECLARATION OF DEED RESTRICTIONS ("Declaration"), made and entered into as of September 5, 2000, by and between Carolyn N. Pilgrim, (the "Owner"), for the benefit of and enforceable by Henderson County (the "Lender");

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

WHEREAS, Lender has made a loan to Owner in the original principal amount of \$28,375.00 (the "Lender"), evidence by a promissory note dated September 5, 2002 and secured by a deed of trust of even date with the promissory note and recorded in the Book 911, Page 264, Henderson County Registry; and

WHEREAS, the Loan was made to provide assistance to a residential housing project with one unit(s) to be acquired, constructed or rehabilitated with the proceeds of the Loan, and with a known street address of 715 North Whitted Street, Hendersonville, NC 28791 for the Property ("Project") pursuant to the HOME Investment Partnerships Program (24 CFR Part 92) ("Program Regulations"), which Program Regulations, amount other things, restrict the use of Program assistance to property which will provide affordable housing for at least minimum period of time as prescribed therein; and that the Owner occupy the Property as his/her principal residence; 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 agree:

1. Minimum Program Restrictions. At all times during the Term of this Declaration the Owner and the Project shall comply with all the regulations affecting 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 Regulation (24 CFR Part 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 10 years from date hereof, which period must also equal or exceed the loan term of the HOME Program Loan to the Owner that closed on the same date of this Declaration; however, this Declaration period shall in no event be less than the required minimum period of affordability under the applicable Program Regulations ("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 Part 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 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 tenants 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 intending 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 hereafter 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 instruments. 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.

4. Compliance Monitoring. The Owner agrees to permit, during normal business hours and upon reasonable notice, any duly authorized representation 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 Progra, 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 LIMITATIONS 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 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 Project at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as

to any breach or violations 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 violations or any similar breach of violation hereof at any later time or times.

6. Amendment. This declaration shall not be amended or, except otherwise provided herein, terminated except by written instrument, executed by the Lender and the Owner, or their successors or 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 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, or in ascertaining intent if any questions of intent shall arise.

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

Declaration by duly authorized representatives, all on the date first written above.

Signature page to follow:

## **EXHIBIT A**

### **TRACT ONE:**

**BEGINNING** on a stake in the line of the former Jane Williams (now known as Robinson) property, said stake being located at the southwestern corner of the Walter Green lot described in Deed Book 103, at Page 212, Henderson County Registry, and run thence from said beginning point with the line of the Jane Williams property South 4 degrees West 50 feet to a stake, the northwest corner of the Robert Quinn lot; thence with the line of the Quinn lot South 86 degrees East 110 feet to a stake, northeastern corner of the Robert Quinn lot in the line of the John Penson property described in Deed Book 116, at Page 128; thence with the line of said Penson property North 4 degrees East 50 feet to a stake in the line of the Walter Green lot (referred to above); thence with the line of the Walter Green lot North 86 degrees West 110 feet to the **BEGINNING**.

### **TRACT 2:**

**BEGINNING** at the northeast corner of the Oakdale School property, also being the southeast corner of S.B. Wheeler's line, thence North 86 degrees West 200 feet to a stake; thence with Jane Williams line South 4 degrees West 45 feet to an iron pin; thence South 86 degrees East 200 feet to an iron pin on Curry Street; thence with Curry Street North 4 degrees East 55 feet to the **POINT AND PLACE OF BEGINNING**.

**BEING THE** same property described in Deed recorded in Deed Book 976, at Page 376, Henderson County Registry.

***THIS CONVEYANCE IS MADE SUBJECT TO*** easements, restrictions, rights of way of record and utility lines which may be in existence over or under the subject property.



# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** December 6, 1999  
**SUBJECT:** Homebuyer Assistance Program  
**ATTACHMENTS:** Yes

### **SUMMARY OF REQUEST:**

**Representatives on the Asheville Regional Housing Consortium from Henderson County and the City of Hendersonville have developed a proposal to establish a Homebuyers Assistance Program utilizing HOME funds. This program, which is outlined in the attached proposal, will provide cash assistance for down payments and closing costs for low to moderate-income residents of the County.**

**Our representatives, Dot Moyer and Selena Coffey, will be present to inform the Board on this proposed project and request permission to pursue funding for this program.**

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# **Homebuyer Assistance Program**

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Proposal for Utilization of HOME Program Funds

**Presented to: Henderson County Board of Commissioners**

**Date Presented: December 6, 1999**

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# Homebuyer Assistance Program

## Proposal for Utilization of HOME Program Funds

### Introduction

As Henderson County and City of Hendersonville representatives for the Asheville Regional Housing Consortium, Dot Moyer, Barbara Volk, and Selena Coffey have developed a proposal for utilizing a small portion of the respective HOME Program allocations for the upcoming fiscal year. This proposal involves the establishment of a *Homebuyer Assistance Program*, which will provide cash assistance for down payments and closing costs for the purchase of homes by low to moderate-income residents of Henderson County. Within this program, a total of \$50,000 of HOME Program funds will be obtained through the Consortium, with \$25,000 coming from the City of Hendersonville's allocation and \$25,000 from Henderson County's allocation. Because the HOME requires a match of 25% for program allocations, \$12,500 will be contributed in the form of private donations and in-kind services. It is also proposed that Henderson County administer this program. The program is described in detail in the following sections.

### Program Description

The *Homebuyer Assistance Program* as administered by Henderson County, will

- Utilize \$50,000 in HOME funds to provide cash for down payments and closing costs associated with the purchase of a primary residence in Hendersonville or Henderson County;
- Assist approximately 15-18 low to moderate-income residents of Henderson County/Hendersonville;
- And will only be available to persons who qualify for loans from conventional lenders but do not have sufficient savings to complete the home purchase.

### Discussion

There is demonstrable need for affordable housing in Henderson County/Hendersonville. The only programs to assist families with the acquisition of a home in the County are Habitat for Humanity, which completes approximately 6 homes per year, and HomeAid, formerly Housing Assistance Corporation, whose project completion rates vary from year to year. These programs, although providing essential services, do not assist many who need help for one or both of the following reasons:

1. their income is too high (over 50% of area median income);
2. they are unable to assist with the required sweat equity hours for the new construction of a home (300-600 hours).

Further, local real estate agents and mortgage lenders report that a growing number of low to moderate-income residents are looking to purchase a home and can afford monthly payments, but have insufficient savings to complete the purchase. While this may be due to many causes, the premium housing prices in the area, a low wage, service driven job economy, and the high cost of rental housing make saving for a down payment and closing costs difficult.

The *Homebuyer Assistance Program* would assist many residents “in the middle,” those with too much income to qualify for subsidized programs but not enough income to accumulate sufficient savings to purchase a home in the current market. The Program would utilize Federal dollars in the form of HOME funds to provide the down payment and closing costs necessary to purchase a home financed by a conventional lender. This cash would be provided at closing in the form of no-interest, deferred-payment loans due upon the sale or transfer of the house to a non-qualified purchaser. Repaid loan proceeds would be available to the City/County to support affordable housing purposes. Loan amounts would be \$1,000 to \$3,000, with discretion on the part of the Program Administrator to make loans up to a maximum of \$5,000 for unusual circumstances (e.g. very large families, major systems replacement necessary, family housing emergency, etc.). The Program requirements are listed in Exhibit A.

This program does not require any City or County funds. The County, as contracting party, would administer the \$50,000 in HOME funds, which would require minimal staff resources. The required local match (\$12,500) would be provided by private sources as set forth in the attached *Homebuyer Assistance Program* budget (Exhibit B). In addition to providing the required match, the fee reductions required of participating lenders, agents, etc. would actually reduce the amount paid by the purchaser.

After initial program set-up and training of local real estate agents and mortgage lenders, this program should be quite simple to administer. Two similar programs are operated in Asheville and Buncombe County where administration, although minimal, is done by the lenders. Loan assistance in those programs averages around \$2,000 per purchase. In the primarily proposed *Homebuyer Assistance Program*, families who initially do not qualify will be referred to Consumer Credit Counseling and/or HomeAid’s homeownership classes for help in becoming qualified to purchase a home.

Financial considerations include the direct assistance of \$50,000 in Federal funds, leveraged by the donated \$12,500 in local match and approximately \$1,125,000 of private mortgage money. It is anticipated that some enhancement in property tax revenue will accrue because many buyers will work to increase the value of their homes through sweat equity improvements. In addition, neighborhood and family stability is enhanced through affordable owner-occupied housing. Finally, some marginal housing stock may be rehabilitated through this program.

Most importantly, Henderson County and the City of Hendersonville, at limited local cost, will assist approximately 15 low to moderate-income families who could not otherwise afford to own a home to become homeowners.

## EXHIBIT A

### *Homebuyer Assistance Program Requirements*

<b>Assistance:</b>	No interest, deferred loans of \$1,000-\$3,000 with the ability on part of the administrator to provide up to a maximum of \$5,000 in unusual circumstances at their sole discretion.
<b>Residency:</b>	Hendersonville or Henderson County for at least 1 year.
<b>Income Eligibility:</b>	Low to moderate-income households (i.e. income less than 80% of AMI from all sources. Note that income eligibility is very important to maintain HOME compliance or funds must be repaid to HUD).
<b>Financing:</b>	Must qualify for competitive rate financing through participating conventional lenders (banks, credit unions, mortgage companies). Participating lenders must agree to waive \$100 of their loan origination fee. A home inspection is required.
<b>Closing Costs:</b>	Reduced fees negotiated by County with attorneys, surveyors, inspectors.
<b>Form of Assistance:</b>	Home purchasers would receive a 0% interest deferred payment loan at closing, evidenced by a note to Henderson County and secured by a Deed of Trust. The loan would be due upon the transfer of the home to a person not meeting the income qualifications. Discretion on the part of the Program Administrator to forgive the loan if the value of the property has decreased during the loan period.
<b>Buyer's Contribution:</b>	At least \$1,000 of their own money at closing.
<b>Marketing:</b>	Lending institutions and Real Estate companies, who become Program Partners with Henderson County by contributing toward the match, will pay for the cost of marketing materials and advertising.
<b>Program Set-Up/Training:</b>	Private donated services.

**EXHIBIT B**

***Homebuyer Assistance Program Match Budget (Estimated)***

The following budget is based on program assumptions of 15 homes purchased and an average of \$75,000 mortgage per home.

Loan origination fee reduction (\$100 x 15 homes)	1,500
Real estate commission reduction (\$100 x 15 homes)	1,500
Attorney's fee reduction (\$50 x 15 homes)	750
Surveyor's & Inspector's fee reduction (\$50 x 15 homes)	750
Attorney's fee donated for document prep (\$75 x 15 homes)	1,125
Attorney's fee donated for program set-up, documentation, and training (15 hours)	2,250
Marketing expenses paid by partner lenders and real estate agents	<u>5,000</u>
<b>Total Local Donated Match Funds</b>	<b>\$ 12,875</b>

Note: The present value of interest rates below current T-bill rates may be counted in match, however, it is not included in the above estimate.