



City of Annapolis
160 Duke of Gloucester Street
Annapolis, MD 21401

**AFFORDABLE HOUSING TRUST FUND ASSISTANCE
DEED OF TRUST
WITH
[INSERT THIRD PARTY NAME(S)]**

THIS AFFORDABLE HOUSING TRUST FUND ASSISTANCE DEED OF TRUST ("Deed of Trust") is made this ____ day of _____, 20__ by and between the City of Annapolis, a municipal corporation of the State of Maryland (the "City") and _____ (the "Borrower").

WHEREAS, the City operates a Affordable Housing Trust Fund for the purpose of providing financial assistance for settlement expenses in accordance with Section 20.30.070 of the City Code, as may be amended; and

WHEREAS, the Borrower plans to purchase property in the City and has accepted financial assistance from the City Affordable Housing Trust Fund in connection with such purchase; and

WHEREAS, the Borrower is indebted unto the City, its successors and assigns and any other person to whom the City may grant an interest in the Borrower's obligations to the City, and shall be binding and enforceable against the Borrower for money borrowed in the amount of ____ Thousand Dollars and No Cents (\$____,000.00) (the "Loan") in lawful money of the United States of America, as evidenced by this Deed of Trust and that certain City Deed of Trust Note of even date herewith from the Borrower to the City and/or its authorized representative (the "Note"), with interest computed thereon at the rate and payable as is set forth in the Note; and

WHEREAS, the Borrower desires to secure to the City the full and punctual payment of any and all amounts coming due under this Deed of Trust and the Note, and the performance of the covenants contained in this Deed of Trust and the Note; and also to secure the reimbursement to the City, and any purchaser or purchasers, grantee or grantees under any sale or sales under the provisions of this Deed of Trust for all money which may be advanced as herein provided for, and any and all costs and expenses (including reasonable attorneys' fees) incurred or paid on account of any litigation at law or in equity which may arise in respect to this Deed of Trust, or to the indebtedness or to the property herein described, or in obtaining possession of the property after any sale which may be made as hereinafter provided; and

WHEREAS, the Borrower is granting this Deed of Trust to serve as a lien against the Borrower's property to secure the Borrower's repayment of the money borrowed.

NOW, THEREFORE, THIS DEED OF TRUST WITNESSETH:

THAT the Borrower, in consideration of the premises and terms and conditions herein, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and assign unto the City all of the Borrower's fee simple estate in and to that certain real property located at _____, Annapolis, Maryland, 2140_____ and described in a deed dated

_____, 20____ and recorded among the Land Records of Anne Arundel County, Maryland in liber _____, folio/page _____.

TOGETHER with all improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alterations and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the said premises (the above described real property and improvements are hereinafter the "Property").

TOGETHER with all rights, title and interest of the Borrower, including but not limited to, any after-acquired title, interest, or reversion, in and to the beds of the ways, streets, avenues and alleys adjoining the Property.

TOGETHER with all the tenements, hereditaments, easements, appurtenances, passages, waters, water rights, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to the Property, including but not limited to, any claim at law or in equity, as well as any after acquired title, interest, franchise or license and reversion and reversions and remainder and remainders.

TOGETHER with a security interest in all amounts that may be owing at any time and from time to time by the Borrower to the City in any capacity, including, but not limited to, any balance or share belonging to the Borrower of any deposit or other account with the City.

TOGETHER with all rights, benefits, profits, rents and monies payable under, by reason of or with respect to any restrictive covenants, easements, agreements applicable to adjoining or appurtenant lands or contracts of sale with respect thereto with the right to collect any sums of money at any time payable to the Borrower in consequence of such rights and benefits, including the release, modification or amendment thereof, for application to sums then due and owing the City under this Deed of Trust or the Note, and to utilize any collection or enforcement rights or remedies to collect the same available to the Borrower under law, as to all of which, and the proceeds and products thereof, the Borrower hereby grants to the City continuing security interest in and to.

AND ALSO TOGETHER WITH all of the proceeds of the voluntary or involuntary conversion of the Property or any part of the Property into cash or liquidated claims, whether by way of condemnation, insured casualty, judgment or otherwise, as well as a security interest which is hereby granted to the City in the same.

THIS DEED OF TRUST is subordinated only to (1) the indemnity/deed of trust from the Borrower to the trustees for _____, Inc. in the principal amount of _____ Thousand Dollars and No Cents (\$_____,000.00) recorded prior hereto among the Land Records of Anne Arundel County, Maryland, and (2) the indemnity/deed of trust from the Borrower to the trustees for _____, in the principal amount of _____ Thousand Dollars and No Cents (\$_____,000.00) recorded prior hereto among the Land Records of Anne Arundel County, Maryland ("Permitted Liens").

TO HAVE AND TO HOLD the above granted and described Property, with all of the appurtenances, improvements, rights and easements described above unto the City, in trust, forever in fee simple.

PROVIDED, HOWEVER, that if the Borrower shall pay in full the Loan, together with any applicable interest thereon, in the manner provided in this Deed of Trust and the Note, and

keeps and performs every obligation, term, covenant, condition and warranty contained in this Deed of Trust and the Note, then this Deed of Trust shall be released.

FURTHER, the parties agree as follows:

I. LOAN PURPOSE; PAYMENT; LOAN FORGIVEN.

a. In exchange for the Loan, the Borrower shall only use the Loan for the purposes of payment of settlement expenses, down payment and mortgage write down assistance for the Property, and in accordance with Section 20.30.070 of the City Code, as may be amended.

b. The Borrower shall promptly pay when due the principal of the indebtedness evidenced by the Note, any costs as provided in the Note, and the principal of and interest, if any, secured by this Deed of Trust.

c. The Borrower shall not be required to repay any part of the Loan and this Deed of Trust shall be of no further effect if, after ten (10) years from the date of this Deed of Trust, the Borrower:

(1) Has not sold, transferred or conveyed the Property;

(2) Has maintained the Property as his or her principal place of residence;

(3) Has lived continuously at the Property, except for temporary periods where the Borrower has been absent due to medical or employment related reasons and intends to return to and reside at the Property; and

(4) Has not leased the Property exclusively to others, including but not limited to family members and friends, for any period of time or for any term, with or without a written lease, and regardless of the amount of rent paid to the Borrower.

c. If no repayment is required pursuant to this Deed of Trust, upon the passage of ten (10) years after the date of this Deed of Trust, it shall be of no further effect and shall be released.

II. REPAYMENT FOR MISDEMEANER OR FELONY.

The Borrower shall be required to repay directly to the City all Loan funds released, without interest or penalty if, at any time after any Loan funds have been released, the Borrower is found guilty of or accepts a verdict of probation before judgment in connection with any misdemeanor or felony involving the use or ownership of the Property for unlawful purposes, or any other person, with the knowledge or consent of the Borrower, uses the Property for unlawful purposes and that person is found guilty of or accepts a verdict of probation before judgment in connection with any misdemeanor or felony involving the use or ownership of the Property for unlawful purposes. In either case, the Borrower shall be required to give notice to the City of the entry of guilty or probation before judgment within five (5) calendar days after entry by the applicable Court. The City, under such circumstances, shall be entitled in its sole discretion to accelerate repayment of the Loan so that repayment in full shall be immediately due and payable.

III. EXTENSION/WAIVER.

Any extension which the City allows the Borrower for the time to repay Loan funds and any forbearance by the City in exercising any right or remedy pursuant to this Deed of Trust or

otherwise afforded by law, shall not be a waiver of any provisions of this Deed of Trust or the City's rights and remedies pursuant to this Deed of Trust or preclude the City's exercise or enforcement of such provisions, rights or remedies.

IV. DEFAULT.

Any of the following events shall constitute a default of this Deed of Trust, in which case the City, with notice to the Borrower, may declare this Deed of Trust in default and impose immediate and full acceleration of the amount due:

- a. The Borrower's failure to repay the Loan in the manner and at the time when due;
- b. The Borrower's failure to timely pay any other mortgages or deeds of trust governing the Property, or taxes, public or private assessments, ground rents and other charges, fines, levies and impositions against the Property;
- c. The Borrower's non-compliance with any of the terms of the City Affordable Housing Trust Fund, as governed by Chapter 20.30 of the City Code, and failure to cure non-compliance within ten (10) calendar days after receiving written notice from the City to do so, if the City so allows such a cure period;
- d. The Borrower's failure to give timely notice to the City or comply with any other terms of this Deed of Trust;
- e. The Borrower's failure to pay or perform any obligation whatsoever that results in a lien being placed on the Property, which is not cured within a reasonable period of time;
- f. The Borrower's falsification in any material respect of any representations made to the City in order to secure the Loan or other funds pursuant to the City Affordable Housing Trust Fund;
- g. The condemnation or other appropriation of the Property by a governmental unit;
or
- h. The Borrower's filing of any petition for relief under the Bankruptcy Code, as amended from time to time, or any petition or pleading initiating any state or federal insolvency proceeding, an assignment for the benefit of creditors, or an action seeking a judicial modification or alteration of the City's rights; or the entry of a court order appointing a trustee or receiver of or for the Property or a substantial portion of the Property or for the Borrower, or the Borrower's filing any proceedings for dissolution or liquidation, or the Borrower's failure to pay any corporate taxes or failure to maintain a certificate of authority to do business in the State of Maryland.

V. INSURANCE; MAINTENANCE.

a. The Borrower shall maintain property and casualty insurance for all improvements, fixtures and other personal property on the Property, whether now or subsequently in existence, against damage or loss caused by fire and other hazards, casualties and other contingencies, and shall maintain flood insurance, if applicable, in a gross combination amount to be determined by the City, which amount shall be not less than the greater of one hundred percent (100%) of the Loan and/or one hundred percent (100%) of the fair market value of the Property and/or one hundred percent (100%) of the balance due on any prior recorded mortgage or deed of trust governing the Property.

b. The Borrower shall maintain liability insurance which shall have coverage for bodily injury and property damage in amounts to be determined by the City.

c. The Borrower shall pay all insurance premiums when due.

d. All policies of insurance shall name the City as a loss payee for all property insurance purposes and as an additional insured for liability insurance purposes.

e. The Borrower shall not allow or permit any insurance policies referenced above to be cancelled or to expire or to change in any manner without the prior written consent of the City.

f. The Borrower shall prepay all such insurance policies and, upon the City's request, shall provide certificates of insurance or other proof of insurance to the City.

g. If the Borrower fails to maintain insurance as required by this Deed of Trust, the City may, upon reasonable notice to the Borrower, procure and maintain such insurance, and any amounts advanced to do so shall become an additional obligation of the Borrower to the City, which amount shall be considered an additional indebtedness secured by this Deed of Trust and the Property.

h. In the event of an insurable loss, the Borrower shall give written notice to the City within five (5) calendar days after the loss occurs describing the loss in detail. If the Borrower does not make proof of loss or file a claim promptly, the City is authorized to file notice and a claim and submit proof of loss and negotiate and litigate any claims under each insurance policy, and to collect and receive insurance proceeds and to deduct there from the City's expenses, including costs and attorney's fees, to collect such proceeds, and apply insurance proceeds to the reduction of the indebtedness under this Deed of Trust, in which case the due date of the Borrower's monthly installment payments shall not be extended or postponed, or to the restoration or repair of the Property. Under these circumstances, if the Borrower is the payee of any check for insurance proceeds, the Borrower shall endorse the check to the order of the City and shall promptly deliver the check to the City.

i. The City shall not incur any expense required to maintain insurance policies required by this Deed of Trust or to file claims.

j. The Borrower shall provide the City with documentation that homeowner's insurance pursuant to the terms stated herein is in force before and as a condition for receiving the Loan or other funds from the City Affordable Housing Trust Fund and for the duration that this Deed of Trust is in effect.

k. Any breach of the insurance provisions of this Deed of Trust shall constitute a default of the Deed of Trust, in which case the City, with notice to the Borrower, may declare this Deed of Trust in default and impose immediate and full acceleration of the Loan indebtedness.

l. The Borrower shall keep the Property in good order and repair, shall not commit or permit any waste, impairment or deterioration of the Property, shall not act or fail to act in any manner which shall jeopardize the lien of this Deed of Trust, and shall not cause or permit the presence, use, disposal, storage or release of any toxic or hazardous substances on or in the Property, including but not limited to gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides or herbicides, volatile solvents, materials containing asbestos and/or formaldehyde, and radioactive materials, and any other materials as defined by federal and

Maryland environmental laws, or do or allow anyone else to do anything affecting the Property that is in violation of federal and Maryland health, safety and environmental laws. The Borrower within five (5) calendar days of himself or herself having notice shall promptly give notice to the City of any investigation, claim, demand, lawsuit, notice or other action by any federal or Maryland governmental or regulatory agency or private party having to do with toxic or hazardous substances, as defined above, in or on the Property, or conditions on the Property which are alleged by anyone or any entity or governmental or regulatory agency to be violations of federal or Maryland health, safety or environmental laws.

VII. COMPLIANCE.

a. The Borrower shall observe and comply with all the conditions and requirements of any note, deed of trust, mortgage, or any other instrument evidencing or securing the Permitted Liens or a lien (if any) subordinate to the lien of this Deed to Trust. The existence of any prior lien other than the Permitted Liens shall be a default under this Deed of Trust. A default under an instrument securing the Permitted Liens or any other prior lien or any subordinate lien shall be a default under this Deed of Trust, and all the sums secured by this Deed of Trust shall be and become immediately due and payable without notice or demand.

b. In connection with the Loan secured by this Deed of Trust, the Borrower has entered into and executed the Note. A default under the terms of the Note shall constitute a default under this Deed of Trust.

VIII. MISCELLANEOUS.

a. The City is entitled to make reasonable entries upon the Property and inspect the Property upon notice to the Borrower specifying reasonable cause for such inspection related to the City's interest in the Property.

b. The Borrower shall indemnify, defend and hold harmless the City, its elected officials, appointees, directors, employees, agents, contractors and representatives from any and all liabilities, claims, suits, or demands including attorneys' fees which may be incurred or made against the City, its elected officials, appointees, directors, employees, agents, contractors and representatives resulting from any act or omission committed in the performance of the duties imposed by and performed under the terms of this Deed of Trust by the Borrower. The Borrower shall not be responsible for acts of gross negligence or willful misconduct committed by the City.

c. Nothing contained in this Deed of Trust shall be construed in a manner to create any relationship between the Borrower and the City other than expressly specified herein, and the Borrower and the City shall not be considered partners or co-venturers for any purpose on account of this Deed of Trust.

d. The Borrower shall not assign its rights or obligations under this Deed of Trust without the express prior written consent of the City.

e. This lien of this Deed of Trust shall run with the Borrower's Property and be binding on and enforceable against the parties and their respective heirs, personal representatives, successors and assigns.

f. In the event any one or more of the provisions of this Deed of Trust shall for any reason be held by a court or other lawful authority to be invalid, illegal or unenforceable, in

whole or in part or in any other respect, the remaining provisions hereof shall not be affected thereby, and the Deed of Trust shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

g. This Deed of Trust and its interpretation shall be governed by Maryland law. The venue for all actions pursuant to this Deed of Trust shall be the Courts of Anne Arundel County, Maryland. The parties waive trial by jury in all actions brought pursuant to this Deed of Trust.

h. The captions and headings contained in this Deed of Trust are included herein for convenience of reference only and shall not be considered a part hereof and are not in any way intended to limit or enlarge the terms hereof.

i. The failure of the City to appropriate sufficient funds in any future fiscal year to provide funds for this Deed of Trust shall entitle the City to terminate this Deed of Trust with thirty (30) calendar prior written notice to the Borrower.

j. Time is of the essence in connection with all provisions of this Deed of Trust.

k. This Deed of Trust and the Note are the final and entire agreement of the parties with respect to their rights and obligations regarding the Borrower's participation in the City Affordable Housing Trust Fund and all obligations arising there from, and there are no oral or written understandings with respect thereto other than as stated herein. None of the terms or provisions of this Deed of Trust may be changed, waived, or modified exempt by written instrument executed by both parties hereto, duly notarized and recorded among the land records of Anne Arundel County, Maryland at the expense of the City.

l. Except for any notice required to be given by law in another manner, the parties shall give notice to each other for any matters having to do with this Deed of Trust by sending such notice by certified mail or delivering it in person to the following addresses, or such other address as they may designate to the other by certified mail or by personal delivery:

The City: Director, Planning and Zoning
145 Gorman Street, 3rd Floor
Annapolis, Maryland 21401

With a Copy to: City Attorney
160 Duke of Gloucester Street
Annapolis, Maryland 21401

The Borrower:

m. The Borrower acknowledges that he or she has read this Deed of Trust and understands it completely, that he or she is entering into this Deed of Trust freely, voluntary and knowingly, and that he or she is entitled to and has been given an opportunity to review this Deed of Trust, before signing it, with an attorney of his or her own selection to consider its meaning, consequences and fairness.

IN WITNESS WHEREOF, the Borrower and the City have caused this Deed of Trust to be executed under Seal as of the day and year written above.

BORROWER:

Witness

Name: (Seal)

State of Maryland, Anne Arundel County:

I Hereby Certify that on the ____ of _____, 20__, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me or satisfactorily proven to be the person whose signature appears above, and he/she has signed this Deed of Trust in my presence and acknowledged that it is his/her free and voluntary act for the purposes stated therein.

Witness my signature and notarial seal.

NOTARY PUBLIC

My Commission expires: _____

Attest and Acknowledgement: CITY OF ANNAPOLIS

Regina Watkins-Eldridge MMC City Clerk

By: _____
Gavin Buckley, Mayor

State of Maryland, Anne Arundel County:

I hereby certify that on this ____ of _____, 20__, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Gavin Buckley, Mayor of the City of Annapolis, known to me or satisfactorily proven to be the person whose signature appears above, and he/she has signed this Deed of Trust in my presence and acknowledged its acceptance by the City of Annapolis.

NOTARY PUBLIC

My Commission expires: _____

APPROVED FOR SUFFICIENT APPROPRIATIONS
AND AVAILABILITY OF FUNDS:

Joanna D. Dickinson, Director
Finance Department
Source of Funds: _____

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

Office of Law
D. Michael Lyles, City Attorney

I hereby certify, pursuant to Annotated Code of Maryland, Real Property Article, Section 3-104, that the foregoing Deed of Trust has been prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Name:
Title:

Return to:
City of Annapolis
Office of Planning and Zoning/Community Development Division
145 Gorman Street, 3rd Floor, Annapolis, MD 21401