

CHIP CLOSING PACKET



**Georgia Department of Community Affairs
Community HOME Investment Program
HOMEBUYER ASSISTANCE LOAN AGREEMENT**

THIS AGREEMENT is entered into this _____ day of _____, 20____, between _____ (the “Borrower”) and the State Recipient or Sub-recipient _____ (“Lender”).

RECITALS:

WHEREAS, Borrower has applied to Lender for a loan (the “Loan”) to assist Borrower in purchasing a single-family home that will be Borrower’s primary residence, which home is located at _____, Georgia (the “Property”),

WHEREAS, the Loan is being made under the Community HOME Investment Program (“CHIP”), which is part of the HOME Program, which is administered on behalf of the Georgia Housing and Finance Authority by the Georgia Department of Community Affairs (“DCA”);

NOW THEREFORE, for good and valuable consideration, including the making of the Loan, the parties agree as follows:

AGREEMENT:

1. The Loan and Loan Documents:

The Loan amount shall not exceed \$_____. The payment terms, interest rate, and other requirements of the Loan are specifically set forth in the Promissory Note from Borrower to Lender (the “Note”), which will be executed contemporaneously with this Agreement or at the closing of the purchase of the Property (the “Closing”). The payment of the Note shall be secured by a Deed to Secure Debt (the “Deed”) from Borrower to Lender for the Property. If this Agreement is executed in advance of the Closing, the Closing must occur no later than _____, 20_____.

The terms of the Note and the Deed are incorporated in this Agreement by reference as fully and to the same extent as though set forth herein.

2. Conditions of Closing and Disbursement:

Lender shall not be obligated to close the Loan or disburse any of the Loan proceeds until it has received a copy of the sales contract for the Property, a satisfactory appraisal, confirmation of other funds needed to complete the purchase, and satisfactory proof or confirmation of satisfaction of all other DCA requirements and the HOME regulations.

3. Ownership during the Affordability Period:

Borrower’s family shall continuously use and occupy the Property as its principal residence for a period of not less than _____ years from the Closing. This _____ year period is the Affordability Period. For purposes of this Agreement, “family” shall have the same meaning as in the HOME regulations (currently found at 24 CFR §92.1 *et seq.*). Borrower shall not lease or voluntarily or by operation of law sell all or any part of the Property or any interest in the Property during the Affordability Period.

If the covenants in this Section are breached before the expiration of the Affordability Period, the Loan amount shall be subject to recapture by Lender.

4. Recapture:

During the Affordability Period, the Borrower must immediately notify the Lender if either of the following occurs:

- A. The Property is not used as the principal residence of the Borrower or the Borrower's family; or
- B. All or part of the Property or an interest therein is sold or transferred by the Borrower except for (a) the creation of a lien or encumbrance subordinate to the Deed, (b) the creation of a purchase money security interest for household appliances or (c) a transfer by device, descent or by operation of law upon the death of a joint tenant.

Any outstanding balance of the Loan must be repaid in full if the Property is not used as the principal residence of the Borrower or the Borrower's family for the entire Affordability Period. If the property is sold, the repayment is limited to the net proceeds of the sale which is defined as the sales price minus any superior loan repayments and closing costs.

5. Other HOME Requirements:

The Borrower agrees to comply with all regulations governing the HOME Investment Partnerships Program found in 24 CFR Part 92, including but not limited to the following:

- A. **Purchase Price:** The total purchase price of the Property cannot exceed the limits established annually by HUD for the area in which the property is located. These limits are calculated in accordance with 24 C.F.R. §92.254.
- B. **Income Requirements:** The borrower's annual household income must be no more than 80% of the median family income (adjusted for household size) as established by the U.S. Department of Housing and Urban Development (HUD).
- C. **Property Standards and Inspections:** The property must meet the minimum property standards as established by HUD, including but not limited to compliance with all building codes and local ordinances. During the Affordability Period and with written notice to the Borrower, the Borrower agrees to allow the Lender or its representatives to enter upon the Property for inspections as required to verify compliance with the property standards.
- D. **Counseling:** The Borrower must have completed a HUD-approved homeownership education course from a HUD approved housing counseling agency prior to receiving the Loan.

6. Amendments:

No amendment, change or modification of this Agreement shall be effective unless made in writing signed by the Lender.

7. Indemnification:

The Borrower agrees to hold the Lender and DCA harmless and to indemnify Lender and DCA from all liabilities, claims, or damages whatsoever, arising or alleged to have arisen or in any way connected to the receipt of the Loan funds.

8. Governing Law:

This Agreement shall be governed by the law of the State of Georgia. In the event that any provision or clause of this Agreement conflicts with applicable law, such conflict shall not affect the other provisions which can be given effect without the conflicting provisions.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

WITNESS:

BORROWER (S):

Date: _____

Date: _____

WITNESS:

LENDER:

By: _____

Its: _____

Date: _____

Georgia Department of Community Affairs
Community HOME Investment Program (CHIP)
PROMISSORY NOTE
FOR
HOMEOWNERSHIP ASSISTANCE

FOR VALUE RECEIVED, the Undersigned (hereinafter called "Borrower") promise(s) to pay to the order of Georgia Housing and Finance Authority ("GHFA"), a political subdivision of the State of Georgia (hereinafter called "Lender") the principal sum of \$_____ shall be immediately due and payable upon the occurrence of any Payment Event.

1. Definitions. In addition to terms defined elsewhere in this Note, the following terms shall have the following meanings: "Affordability Period" means the period starting with the date of this Note and continuing for the applicable number of years outlined below; "Anniversary" means one year from the date of this Note (which would be the first Anniversary) and the same day of each subsequent year through the end of the Affordability Period; "Borrower" means and includes all persons signing this Note; "Borrower's Investment" means the amount of any funds paid by the Borrower from non-CHIP resources for the purchase of the Property plus all capital improvements to the Property made with Borrower's funds ("Borrower's funds" shall not include Loan proceeds or Senior Loan proceeds), the amount of which must be documented to the satisfaction of Holder in order to be included in the Borrower's Investment; "Deed" means the Subordinate Deed to Secure Debt and Security Agreement from Borrower to Holder, transferring the Property and securing the Loan; "Default Rate" means an interest rate of 10% per year, compounded annually; "Family" has the same meaning as under the HOME regulations (currently found at 24 CFR §92.1 et seq.); "Fraudulent Transfer" means a voluntary Transfer for less than fair market value, which Holder reasonably determines was made for the purpose of avoiding all or part payment under this Note or terminating the Affordability Period early or both; "including" means "including, but not limited to;" "Loan Amount" means the amount of the Loan plus any amounts Borrower owes under the Deed; "Loan Document" means this Note, the Deed, and any other agreement or document relating in any way to the Loan; "Net Proceeds" means the gross amount Borrower receives for a Transfer less any payment on any Senior Loan plus any closing costs that Borrower is obligated to pay in connection with the Transfer, such as real estate commissions, attorney's fees, and the transfer tax; "Payment Event" is an event described in section 5; "Property" means the real property conveyed by the Deed, as more particularly described in the Deed; "Senior Loan" means a loan of Borrower that has an interest in the Property superior to Holder's interest; "Transfer" means any lease or a voluntary or involuntary sale of all or any part of the Property or any interest in the Property.

2. Payment.

(a) Time and Amount of Payment. There will be no required regular monthly or annual payments under this Note. If there is no Payment Event before the end of the Affordability Period as outlined below, Borrower shall not be obligated to pay Holder any part of the Loan Amount. If, however, there is a Payment Event before the end of the Affordability Period, at the time of the Payment Event, Borrower shall pay Holder the amount specified below (the "Amount Due"):

Activity Type	Periods of Affordability	Amount Considered Satisfied for Each Year of the Period of Affordability Completed in its Entirety
Homeownership Assistance Under \$25,000	5 Years	1/5 th
Homeownership Assistance of \$25,000 - \$50,000	10 Years	1/10 th
Homeownership Assistance over \$50,000	15 Years	1/15 th

The Total Value of the Loan Amount is \$_____, and the applicable Length of the Affordability Period is _____ years.

(b) Source of Payment and Proration. The Amount Due shall be reduced on a pro-rata basis for the time the homebuyer has owned and occupied the home, measured against the required Affordability Period. The resulting ratio would be used to determine how much of the direct HOME subsidy will be recaptured. To determine the pro rata amount:

- Divide the number of years the homebuyer occupied the home by the period of affordability,
- Multiply the resulting figure by the total amount of direct HOME subsidy originally provided to the homebuyer.

Number of years homebuyer occupied the home X Total direct HOME subsidy = Recapture Amount
Period of affordability

(c) Application of Payments. Lender will apply any payment first to any charges or other amounts owed under this Note or any other Loan Document, second to any accrued and unpaid interest under this Note, and finally to the principal.

(d) Exceptions. If the Payment Event is a Fraudulent Transfer or if any representation made by Borrower in connection with the Loan was false in any material respect when made, notwithstanding subsections (a)-(c), Borrower shall owe Holder the full Loan Amount, including interest at the Default Rate from the date of the Fraudulent Transfer or the date the misrepresentation is discovered (as the case may be) until payment in full. If there is a Fraudulent Transfer, Holder shall be under no obligation to release any collateral for the Loan, including the Deed and the Property, until the Loan Amount has been paid in full, including all accrued interest.

3. Prepayment. Borrower may prepay this Note in full or in part at any time and from time to time without notice, penalty, or prepayment fee, and, if prepaid in full, the Amount Due at the time of the prepayment shall be calculated under section 2(a), using the date of prepayment as if it were the date of a Payment Event.

4. Costs and Fees. If this Note is collected by law or through an attorney at law, in addition to any other amounts owed under this Note, Borrower shall be liable for all costs of collection incurred by Holder, including attorney's fees equal to 15% of the Loan Amount, whether or not suit is brought and whether incurred in connection with collection, trial, appeal, or otherwise.

5. Payment Events. The following events are “Payment Events” under this Note: (a) a Transfer before the end of the Affordability Period; (b) at any time during the Affordability Period, Borrower or Borrower’s family does not occupy the Property as its principal residence; or (c) Lender declares a default under the Deed.

6. Miscellaneous. **Time is of the essence of this Note.** This Note shall be construed and enforced in accordance with Georgia law. As used in this Note, the words "Borrower" and "Holder" shall include their respective heirs, representative, successors and assigns. If there is more than one person signing this Note, each person signing shall be jointly and severally liable with all other persons signing. By signing this Note, Borrower: (a) waives demand, presentment of payment, notice of dishonor and nonpayment, protest, notice of protest, and all other notices and diligence in collecting this Note; (b) agrees to any substitution, addition, subordination, or release of any collateral (including the Property) or of any person primarily or secondarily liable on this Note; (c) agrees that Holder shall not be required first to sue or exhaust its remedies against Borrower or any other liable person or against any collateral (including the Property) in order to enforce payment of this Note; (d) agrees that Holder may exercise or refrain from exercising any right or remedy that it may have; and (e) agrees that, notwithstanding the occurrence of any of the foregoing, Borrower is liable for all sums due under this Note, unless Holder releases Borrower in writing. No waiver or release by Holder shall be effective unless in writing. A waiver or release with reference to one event shall not be construed as continuing or as a bar to or waiver or release of any subsequent right, remedy, or recourse as to any subsequent event. Borrower waives all homestead and exemption rights it may have under federal or state law, both as to himself and in all of his real and personal property, against the enforcement and collection of the obligations evidenced by this Note. To the extent Borrower has the power to do so, Borrower assigns to Holder a sufficient amount of such homestead or other exempt property as may be set apart in bankruptcy to pay this Note in full with all costs of collection and directs any trustee in bankruptcy having possession of such homestead or exempt property to deliver to Holder a sufficient amount to pay the debt evidenced by this Note. To the extent possible, Borrower appoints Holder as his attorney-in-fact to claim any and all exemptions allowed by law. Borrower understands that Lender will collaterally assign this Note and any other documents relating to the Loan to GHFA and that GHFA shall have all the rights of “Holder” under this Note.

IN WITNESS WHEREOF, Borrower has executed this Note.

Date: _____

Name: _____
[Typed or Printed Name]

Date: _____

Name: _____
[Typed or Printed Name]

Georgia Department of Community Affairs
Community HOME Investment Program

After recording,
return to:
CHIP Manager
GA Department of Community Affairs
60 Executive Park South, NE
Atlanta, GA 30329

**SUBORDINATE DEED TO SECURE DEBT,
RESTRICTIVE COVENANT,
AND SECURITY AGREEMENT**
[CHIP Program—Second Priority]

1. **Grantor:** _____
Whose address is _____

2. **Lender:** _____
Whose address is _____

3. **The Loan:** A loan in the principal amount of \$ _____
4. **Parcel Identification:** The parcel identification number is _____

5. **Intangible Tax:** The intangible recording tax imposed in the amount of \$ _____
6. **Loan Documents:** A promissory note evidencing the Loan (the "Note"), this Deed, and any other document or instrument executed by Grantor or any other person in any way pertaining to the Loan.
7. **Maturity Date:** No later than _____, 20____.
8. **Senior Lender:** The "Senior Lender" is _____, which has a first priority security deed on the Property and a first priority security interest in the Collateral. Borrower and Lender hereby agree and acknowledge that this Deed and the Note are subordinate to the loan documents, right, title, and interests of Senior Lender.
9. **The Property:** The "Property" is the real property described in **Exhibit A**, together with all improvements, fixtures, equipment, easements, rights-of-way, water rights, other rights,

privileges, franchises, tenements, hereditaments, and appurtenances belonging or in any way appertaining to it, including any interest in adjoining roadbeds (all improvements located on the Property now or in the future shall be referred to as the "Improvements").

10. **Obligations**: This Deed secures the following obligations (collectively, the "Obligations"): (a) the Loan and the Note; (b) all other debts, covenants, agreements, and obligations of Grantor to Lender under the Loan Documents; (c) all future amounts Lender advances to Grantor, on Grantor's behalf, or to protect Lender's interest in the Property or Collateral; (d) all other debts of any kind, owing now or in the future from Grantor to Lender.
11. **Grant**: For good and valuable consideration, Grantor grants and conveys to Lender the Property in **FEE SIMPLE**. This Deed is a security deed passing legal title under Georgia law and is not a mortgage. This Deed is made to secure the timely payment and performance of the Obligations. The lien of any future advances by Lender shall relate back to the date of this Deed.
12. **Warranties**: Grantor warrants the following: (a) Subject only to Senior Lender's interests, Grantor has fee simple title to the Property and has legal title to the Collateral. This warranty of title shall survive Lender's foreclosure of Grantor's interest in the Property and shall be enforceable by any person who may acquire title to the Property by foreclosure or sale under power. (b) Grantor warrants and will defend Lender's title to the Property against the claims of all persons. (c) Except for Senior Lender, Grantor has not granted any other person any interest in the Property or the Collateral.
13. **Restrictive Covenant**: During the entire "Affordability Period" (as defined below), Borrower's family shall continuously use and occupy the Property as its principal residence. Borrower shall not lease or voluntarily or by operation of law sell all or any part of the Property or any interest in the Property during the Affordability Period. Any abandonment of the Property or other breach of this Covenant shall be an "Event of Default." As used in this section, "family" has the same meaning as in the HOME regulations (currently found at 24 CFR §92.1 et seq.) and the "Affordability Period" is the period starting on the date of this Deed and continuing for the required number of years in accordance with 24 CFR 254 (4). If this covenant is breached before the expiration of the Affordability Period, the Loan amount (or a portion of it) shall be subject to recapture by Lender, as more particularly set forth in the Note.
14. **Other Covenants of Grantor**:
 - a. **Insurance**. Until all Obligations are paid in full, Grantor shall obtain and maintain in force fire and casualty insurance insuring the Improvements with Lender named as a loss payee under a mortgagee clause acceptable to Lender. Grantor shall pay all premiums on such insurance on a timely basis. If Grantor fails to pay any insurance premium by its due date, Lender may pay the premium. If Grantor fails to maintain the insurance required by this section, Lender may obtain a replacement policy of insurance. If Lender expends funds under this section, Grantor shall on demand reimburse Lender for the amount expended plus interest at the "Default Rate" (as defined in the Note). Promptly upon request, Grantor shall provide Lender with evidence that it is in compliance with this section. The

form, amount, coverages, and insurer for the required insurance under this section are subject to Lender's approval, and Lender may change the requirements, as it deems prudent in its sole discretion. If there is a loss, subject to the rights of Senior Lender, the proceeds of insurance shall be paid to Lender, and Lender may apply the proceeds to the restoration of the Improvements or to the Loan, as Lender determines in its sole discretion.

- b. Taxes. Grantor shall pay when due all taxes, assessments, and other charges against the Property or Collateral (each of which is referred to as a "Tax"). If, however, Grantor is not in default under any Loan Document, Grantor may contest the Tax, but Grantor must do so diligently, in good faith, and without prejudice to Lender. If required by Lender, Grantor shall provide satisfactory security to protect Lender's interest. If Grantor intends to contest any Tax, Grantor shall give Lender advance notice and, upon request, shall provide Lender with copies of all documents relating to the proceeding. If Grantor fails to pay any Tax when due, Lender may pay the Tax. If Lender does so, Grantor shall on demand reimburse Lender for the amount paid plus interest at the Default Rate.
- c. Security Interest. Grantor grants Lender a security interest in any fixtures or equipment affixed to the Property (collectively, the "Collateral"). Grantor shall execute and deliver to Lender or hereby authorizes Lender to file without Grantor's signature all financing statements, continuation statements, or other instruments requested or deemed necessary or desirable by Lender in order to perfect or maintain the perfection of Lender's security interest in the Collateral. Grantor shall replace any Collateral from the Property with comparable property. If an Event of Default occurs, Lender shall have all of the rights and remedies of a secured party under the Georgia Uniform Commercial Code. Any sale pursuant to this section shall be deemed a public sale conducted in a commercially reasonable manner if held contemporaneously with a sale under the power of sale granted in this Deed. Lender need not take possession of the Collateral before a sale, and it shall not be necessary that the Collateral be present at the location of such a sale. Grantor shall be liable for all expenses incurred by Lender in exercising its rights in the Collateral.
- d. Inspection Right. Lender or its agents may inspect the Property upon giving Grantor reasonable advance notice.
- e. Miscellaneous Covenants. Without Lender's prior written consent, Grantor shall not grant or create any easement or right-of-way in the Property or consent to any other restrictive covenants. Grantor shall maintain the Property in good condition and repair and shall not cause or permit any waste of the Property or any nuisance on the Property. Grantor shall comply with all applicable laws relating to the ownership, use, or operation of the Property, including any environmental laws or regulations. Grantor shall keep the Property free from all mechanics' or materialmen's liens, judgments, and other liens and shall remove or bond over any such lien within 20 days of the time a notice of lien is filed or it attaches to the Property, whichever is sooner. Grantor shall appear in and defend any action or proceeding purporting to affect the Property or Lender's interest in the Property and notify Lender of the proceeding.

15. **Special Waivers:** GRANTOR EXPRESSLY: (A) ACKNOWLEDGES LENDER'S RIGHT TO ACCELERATE THE DEBT AND THE POWER OF ATTORNEY GIVEN IN THIS DEED TO LENDER TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY GRANTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN THE NOTICE (IF ANY) SPECIFICALLY REQUIRED UNDER THE PROVISIONS OF THIS DEED; (B) WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, THE VARIOUS PROVISIONS OF THE CONSTITUTION FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING BEFORE LENDER'S EXERCISE OF ANY RIGHT OR REMEDY, EXCEPT ANY NOTICE SPECIFICALLY REQUIRED BY THIS DEED; (C) ACKNOWLEDGES HAVING READ THIS DEED AND HAVING THE OPPORTUNITY TO ASK ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THIS DEED AND ITS PROVISIONS; (D) ACKNOWLEDGES HAVING CONSULTED OR HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL OF GRANTOR'S CHOICE BEFORE EXECUTING THIS DEED; (E) ACKNOWLEDGES THAT ALL WAIVERS OF RIGHTS HAVE BEEN MADE KNOWINGLY, INTENTIONALLY, AND WILLINGLY; AND (F) AGREES THAT GRANTOR'S RIGHT TO NOTICE SHALL BE LIMITED TO THOSE RIGHTS TO NOTICE PROVIDED BY THIS DEED OR THE OTHER LOAN DOCUMENTS OR AS REQUIRED UNDER LAW (IF ANY) AND NO OTHER.
16. **Events of Default:** Each of the following constitutes an Event of Default under this Deed: (a) Grantor's failure to perform or observe any covenant in this Deed, the Note or any other Loan Document; or (b) any warranty or representation by Grantor in this Deed is false in any material respect when made.
17. **Remedies:** If an Event of Default occurs and is not cured within 10 days in the case of a monetary default and 30 days in the case of a non-monetary default, Lender may declare a default under this Deed and, if Lender does so, in addition to any other rights or remedies Lender may have, Lender may exercise one or more of the following remedies:
- a. **Possession.** Lender may enter upon and take possession of the Property (without the appointment of a receiver or application for one) and do all acts which may be desirable in Lender's judgment to preserve the Property's value, its marketability, or the ability to rent the Property or increase the income from it. If Lender takes possession, it may employ an agent or agents to manage, operate, and lease the Property, either in its own name or in the name of Grantor, and may collect the rents and income and apply them to the Obligations (including expenses of operation and collection) in whatever order it chooses in its sole and absolute discretion.
 - b. **Specific Performance.** Lender may specifically enforce the provisions of this Deed or any instrument evidencing any part of the Obligations.

- c. Protective Advances. In its sole and absolute discretion, Lender may pay any amount deemed appropriate by Lender to protect its interest in the Property and Collateral or cure any Event of Default. The amount of any such payment, with interest from the date of payment at the Default Rate, shall become a part of the Obligations and be due and payable by Grantor to Lender upon demand.
- d. Acceleration. Without further notice to or demand upon Grantor, Lender may accelerate the maturity and payment of the entire Obligations, all of which will then become immediately due and payable.
- e. Power of Sale.
 - i. Lender may sell the Property at public auction at the usual place for conducting sales at the courthouse in the county where the Property or any part of it is located to the highest bidder for cash, first advertising the time, terms, and place of such sale by publishing a notice of the sale once a week for four consecutive weeks (without regard to the actual number of days) in a newspaper in which sheriff's advertisements are published in the county, and Grantor waives all other notice. Lender may execute and deliver to the purchaser at the sale a sufficient conveyance of the Property in fee simple, which conveyance may contain recitals about the default upon which the execution of the power of sale depends, and the recitals shall be presumptive evidence of due compliance with all acts prerequisite to the sale. Lender and its agents and representatives may bid and purchase at any such sale. At any sale under the power granted in this Deed or a sale pursuant to any judicial order or otherwise, the Property or any part of it may be sold in one parcel and as an entirety or in such parcels, manner, or order as Lender in its sole discretion may elect.
 - ii. Grantor hereby constitutes and appoints Lender as its agent and attorney-in-fact to make such recitals, sale, and conveyance, and Grantor hereby ratifies and confirms all acts of its attorney-in-fact. Further, Grantor agrees that such recitals shall be binding and conclusive upon Grantor and agrees that the conveyance by Lender under this power of sale (or by deed in lieu of foreclosure, then as to such conveyance) shall bar all right, title, interest, equity of redemption (including all statutory redemption, homestead, dower, and curtesy), and all other exemptions of Grantor in and to the Property.
 - iii. In case of such a sale, Grantor or any person in possession of all or any part of the Property under Grantor shall become tenants holding over and shall immediately deliver possession to the purchaser at such sale or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over.
 - iv. The power and agency granted to Lender are coupled with an interest and are irrevocable by death, dissolution, or otherwise and are in addition to any other remedies which Lender may have under this Deed or the other Loan Documents, at law, or in equity.

- v. At its option, Lender is authorized to foreclose Grantor's interest in the Property, subject to any superior rights of any tenants of the Property. The failure to make any such tenant a defendant in any such foreclosure action and to foreclose their interests and rights will not be a defense to any action Lender institutes to collect the Obligations or to collect any deficiency. One or more exercises of the powers granted in this Section shall not extinguish or exhaust the power unless the entire Property is sold or the Obligations are paid in full.
- vi. The proceeds of any sale or foreclosure under this Deed shall be applied in the following manner: **First**, to payment of all costs of the sale, including legal fees and disbursements, title charges, advertising, commissions, and transfer taxes and payment of any advances by Lender for expenses and liabilities for which Grantor is responsible under this Deed or any of the other Loan Documents; **Second**, to payment of any other previously unreimbursed amounts expended by Lender under this Deed or any other Loan Document, together with interest at the default rate of interest in the Note; and, **Third**, to payment of the Obligations, including interest at the default rate in the Note. Lender shall have the right to apply the proceeds of the sale to the Obligations in whatever order it chooses in its sole and absolute discretion. After application of the sale proceeds as provided above, if there is any surplus, Lender shall pay that surplus to Grantor. If there is a deficiency, Grantor shall immediately pay Lender the amount of the deficiency.
- f. Receiver. In any action to foreclose this Deed or if an Event of Default occurs, Lender may apply for the appointment of a receiver for the rents and income from the Property or the Property or both. If Lender does so, Grantor agrees that Lender is entitled to the appointment of such a receiver as a matter of right, without regard to the value of the Property as security for the amounts due Lender or the solvency of any person or entity liable for payment of such amounts. Grantor hereby consents to the appointment of such receiver or receivers, waives any and all notices of and defenses to such appointment, and agrees not to oppose any such application by Lender. The appointment of such receiver, trustee, or other appointee by virtue of any court order, statute, or regulation shall not impair or in any manner prejudice Lender's rights to receive payment of the rents and income from the Property pursuant to other terms and provisions of this Deed or any of the other Loan Documents. Any money advanced by Lender in connection with any such receivership shall be deemed part of the Obligations and shall bear interest at the Default Rate (as defined in the Note). The receiver or his agents shall be entitled to enter upon and take possession of any and all of the Property and Collateral to the same extent and in the same manner as Grantor. The receiver or his agents may exclude Grantor and its agents and employees from the Property and may have, hold, use, operate, manage, repair, maintain, insure, and control the Property. At the option of Lender, such receivership shall continue until full payment of all Obligations or until title to the Property is transferred by foreclosure or sale under this Deed.
- g. Remedies Cumulative. The rights and remedies of Lender under this Deed are separate, distinct, and cumulative of other powers and rights that Lender has in law or equity or under the other Loan Documents. No right or remedy of Lender is exclusive; all of them are cumulative to the remedies for collection of debt, enforcement of rights under security

deeds, and preservation of security as provided at law, in equity, or under the other Loan Documents. No act of Lender shall be construed as an election of an exclusive remedy, unless Lender indicates so in writing.

18. Miscellaneous:

- a. Notices. All notices required under this Deed shall be in writing and shall be deemed given and received 3 days from the date of deposit in the U.S. mail, certified mail, return receipt requested, postage-prepaid; or when hand delivered by the party, an overnight service (such as FedEx), or a courier service. The addresses set forth in sections 1 and 2 shall be used. Grantor or Lender may change the address to which notices are to be sent by giving the other party 10 business days written notice of the change.
- b. No Waiver of Future Compliance. Any indulgence or departure permitted at any time by Lender from any of the provisions of this Deed or with respect to the Obligations shall not modify the same or waive the requirement of future compliance by Grantor. Lender's failure to exercise any right or remedy upon an Event of Default shall not waive Lender's rights or remedies for any subsequent Event of Default.
- c. Nomenclature. If there is more than one person signing this Deed, then "Grantor" means and shall include all such persons. The words "Grantor" and "Lender" shall include their respective successors and permitted assigns and all those holding under either of them. Any reference to the "Note" or to any "Loan Document" shall include any amendments, substitutions, renewals, extensions, or replacements to or for it. The word "including" means "including (but not limited to)," unless otherwise specifically stated.
- d. Payment of Expenses. Grantor shall pay all of Lender's expenses actually incurred in any efforts to enforce any provision of this Deed, including reasonable attorney's fees and other legal expenses.
- e. Severability. A determination that any provision of this Deed is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Deed to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstance.
- f. Section Headings. The headings of the sections and paragraphs of this Deed are for convenience only and shall not affect any of the terms of this Deed.
- g. Governing Law. This Deed will be governed by and construed in accordance with Georgia law.
- h. Amendments. This Deed may be amended or modified only by an instrument in writing signed by Lender and Grantor.
- i. Subrogation. Lender shall be subrogated to any encumbrance, lien, claim, or demand, and to all the rights and security for its payment, paid or discharged by Lender under this Deed, and any such subrogation rights shall be additional and cumulative security for Lender.

j. Time of the Essence. **Time is of the essence of this Deed.**

- k. Revival of Deed. Subject to the remainder of this section, if there is an assignment of an FHA mortgage to HUD or if a person forecloses Grantor's interest in the Property or takes a deed in lieu of foreclosure and such person's mortgage or security deed was prior to this Deed, this Deed and the restrictions and covenants in it (including the affordability restrictions in section 11) shall terminate and no longer affect the Property. Notwithstanding such a foreclosure or deed in lieu of foreclosure, however, this Deed and the covenants and restrictions in it shall be revived and shall remain in force for the remainder of the Affordability Period when and if the owner of record before such foreclosure acquires or obtains any ownership interest in the Property at any time during the Affordability Period.

IN WITNESS WHEREOF, Grantor has duly executed and sealed this Deed on _____.

Signed, sealed, and delivered
in the presence of:

Grantor

Unofficial Witness

Grantor

Notary Public

[Notarial Seal]

[8c:\dca\chip_deed1.doc]

Georgia Department of Community Affairs
Community HOME Investment Program
COLLATERAL ASSIGNMENT

Cross-Reference:

After recording,
return to:

Deed Book _____,
Page _____

**COLLATERAL ASSIGNMENT OF DEED TO SECURE DEBT
AND OTHER LOAN DOCUMENTS**

FOR VALUE RECEIVED, the _____ (“Assignor”) hereby transfers and collaterally assigns to the Georgia Housing and Finance Authority (“GHFA”) all of its right, title, and interest in the Deed to Secure Debt from _____ (the “Borrower”) to Assignor, dated _____, 20____, and recorded in Deed Book _____, page _____ of the _____ County, Georgia real estate records, the promissory note from Borrower to Assignor evidencing the Loan, and all other loan documents relating to the Loan from Assignor to Borrower in the amount of \$ _____ (collectively, the “Loan Documents”).

This Assignment is for the purpose of securing a loan and grant from GHFA to Assignor, and Assignor shall not exercise any rights or remedies under the Loan Documents without GHFA’s prior written consent and, if it becomes aware of a default under the Loan Documents, Assignor shall promptly notify GHFA of the default.

IN WITNESS WHEREOF, Assignor has executed this Assignment on the above date.

Signed, sealed, and
delivered in the
presence of:

ASSIGNOR:

Unofficial Witness

By: _____

Title: _____

Notary Public

Attest: _____

Title: _____

[SEAL]

[7c:\GHFA\collateral assignment.doc]