

BK 1558 PG 0054

STATE MS. - DESOTO CO.  
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WHEN RECORDED MAIL BK 1558 PG 0054  
W. E. DAVIS CH. CLK.

GMAC Mortgage Corp.  
100 Witmer Road  
Horsham, PA 19044-0963  
ATTN: Capital Markets

Prepared by:  
Estelle Hamilton  
for: GMAC Mortgage Corp.

\_\_\_\_\_ [Space Above This Line For Recording Data] \_\_\_\_\_

Closed End Loan No.: 531039402

**DEED OF TRUST**

Tax Parcel Identification No. 1-06-8-27-03-0-104

**THIS DEED OF TRUST ("Mortgage")** is made this 26th day of July, 2002, between the Mortgagor, JOHN E. SPIZER, a married person

whose address is 9859 Piney Ridge Drive  
Olive Branch, MS 38654

(herein "Borrower" or "Mortgagor"), and

Barbara Zirilli

(herein "Trustee"),

GMAC Mortgage Corporation

as agent for the District of Columbia Housing Finance Agency acting as nominee for the District of Columbia Affordable Housing Finance Trust (herein after, including its assigns, called "Mortgagee" or "Lender") and any future Holder or Holders.

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of DeSoto, State of Mississippi:

J.E.S.  
MLS

See Attached Schedule A

which has the address of:

9859 Piney Ridge Drive, Olive Branch, MS 38654  
 (Street) (City) (State) (Zip Code)

(herein "Property Address" or "Residence")

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property" or "Residence".

TO SECURE to Lender the repayment of the indebtedness evidenced by Borrower's Note dated July 26, 2002 and extensions and renewals thereof (herein "Note"), in the principal sum of U.S. \$ 6,051.96, (the "Loan") with the balance of the indebtedness, if not sooner paid, due and payable on August 1, 2012; the payment of all other sums, advanced in accordance herewith to protect the security of this Deed of Trust, and the performance of the covenants and agreements of Borrower herein contained.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal.** Borrower shall promptly pay when due the principal indebtedness evidenced by the Note and late charges as provided in the Note.
2. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraph 1 hereof shall be applied by Lender to the principal of the Note.
3. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

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**4. Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust, or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

**5. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

**6. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, the Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 6, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take any action hereunder.

**7. Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection

specifying reasonable cause therefore related to Lender's interest in the Property.

**8. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

**9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceeding against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

**10. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 14 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to mortgage, grant and convey that Borrower's interest in the Property to Lienor under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Note without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

**11. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**12. Governing Law; Severability.** The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the

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 MLS

Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

**13. Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

**14. Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, after giving any grace period, right to cure, and/or reinstatement right required by applicable law, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Lender if exercise is prohibited by Federal law as of the date of this Deed of Trust.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**15. Acceleration; Remedies.** Except as provided in paragraph 14 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 11 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may enforce the lien of this Deed of Trust by judicial proceeding. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 15, including, but not limited to, reasonable attorneys' fees. The parties to this document are subject to the provision for Arbitration as set forth in the Closed End Note which is incorporated by reference as if set forth at length herein.

If Lender invokes the power of sale, Lender shall send to Borrower, in the manner provided in paragraph 11 hereof, notice of Lender's election to sell the Property. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by applicable law. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at such time and place in DeSoto

County as Trustee designates in the notice of sale in one or more parcels and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

**16. Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to the earlier to occur of (i) sale of the Property pursuant to the power of sale contained in this Deed of Trust or (ii) entry of a judgement enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would then be due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants and agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 15 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**17. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 15 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 15 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

**18. Release.** Upon payment of all sums secured by this Deed of Trust, Lender or Trustee shall cancel this Deed of Trust without charge to Borrower. If Trustee is requested to cancel this Deed of Trust, all notes evidencing indebtedness secured by this Deed of Trust shall be surrendered to Trustee.

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 M.L.S.

19. **Substitute Trustee.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

20. This deed of trust is given to secure the payment of the Loan, according to the terms of a certain Down Payment and Closing Cost Assistance Program Note of even date herewith (the "Loan Closing Date"), signed by the Mortgagor, the payment hereon being due on or before the Maturity Date, as provided by the Note.

The Note secured by this deed of trust has a maturity of ten years, but will be forgiven to the extent of twenty (20%) of the original principal amount on the fifth anniversary of the Loan Closing Date; and additional twenty percent (20%) of the original principal amount on the sixth anniversary of the Loan Closing Date; twenty percent (20%) of the original principal amount on the seventh anniversary of the Loan Closing Date; twenty percent (20%) of the original principal amount on the eighth anniversary of the Loan Closing Date. This deed of trust will be fully forgiven on the tenth (10th) anniversary of the Loan Closing Date. Unless the obligations under the Note and this deed of trust are assumed by the transferee of the Residence qualified under the Program in the opinion of the Servicer (described in the Note) of the Loan to assume such obligations, the Note and this deed of trust securing the Property will be accelerated at the then principal balance if the Mortgagor sells the Residence or voluntarily refinances or prepays more than 20% of the original principal balance of the first deed of trust note within ten years of the Loan Closing Date.

In the event the Mortgagor defaults in the prepayment of said indebtedness, or fails to perform the other covenants and agreements hereof, the Mortgagee may foreclose this deed of trust as provided by law; and as often as any proceedings may be taken to foreclose this deed of trust, the Mortgagor agrees to pay to the Mortgagee a sum equal to ten percent (10%) of the amount due as attorneys' fees, in addition to the other sums due, which shall be a further lien secured hereby. Upon the due payment of said indebtedness and the performance of the covenants and agreements hereof by the Mortgagor, this deed of trust shall become null and void.

This deed of trust is and shall be automatically subordinate to any existing first lien real estate deed of trust on the Property.

The parties hereto acknowledge and agree that this deed of trust is subject and subordinate in all respects to the liens, terms, covenants, and conditions of the first lien real estate deed of trust on the Property encumbered by this second lien real estate deed of trust and to all advances heretofore made or which may hereafter be made pursuant to the first lien real estate deed of trust including all sums advanced for the purpose of (a) protecting or further securing the lien of the first lien real estate deed of trust, (b) curing defaults by the Mortgagor under the first lien real estate deed of trust, (c) for any other purpose expressly permitted by the first lien real estate deed of trust, or (d) constructing, renovating, repairing, furnishing, fixturing, or equipping the Property. The terms and provisions of the first lien real estate deed of trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the first lien

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MLS

real estate deed of trust, and provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate income households or otherwise restricting the Mortgagor's ability to sell the Property shall have no further force or effect on subsequent owners or purchasers of the Property (other than the Mortgagor or a related person or entity of the Mortgagor). Any person including its successors or assigns (other than the Mortgagor or a related person or entity of the Mortgagor), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the first lien real estate deed of trust shall receive title to the Property free and clear of such restrictions.

Further, if the holder of the first lien real estate deed of trust (the "Senior Lien Holder") acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of the first lien real estate deed of trust shall automatically terminate upon the Senior Lien Holder's acquisition of title provided that (i) Mortgagee has been given written notice of a default under the first lien real estate deed of trust and (ii) Mortgagee has not cured the default (which cure option may be exercised in Mortgagee's sole discretion under the first lien real estate deed of trust or diligently pursued curing the default as determined by the Senior Lien Holder within the 60-day period provided in such notice sent to Mortgagee).

**REQUEST FOR NOTICE OF DEFAULT  
AND FORECLOSURE UNDER SUPERIOR  
MORTGAGES OR DEED OF TRUST**

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Deed of Trust to give Notice to Lender, at Lender's address set forth on page one of this Deed of Trust, of any default under the superior encumbrance and of any sale or other foreclosure action.

Marilyn L. Spizer, wife of John E. Spizer, joins herein for the purposes of relinquishing her interest in the property by virtue of marriage, but does not join in any covenants or warranties included in this Deed of Trust.

**(THIS SPACE LEFT INTENTIONALLY BLANK)**

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

Borrower (Maker):

*John E. Spizer*  
John E Spizer

(Seal)

-Borrower

*Marilyn L. Spizer*  
Marilyn L. Spizer

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

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**INDIVIDUAL ACKNOWLEDGMENT**

TENNESSEE  
~~STATE OF MISSISSIPPI~~ Shelby County ss:

J.E.S.  
MLS

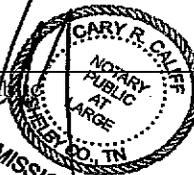
On this 26th day of July, 2002,  
personally appeared before me, the subscriber, the undersigned authority in and for said County  
and State, the within named  
JOHN E. SPIZER and wife, Marilyn L. Spizer

who acknowledged that tHE y signed and delivered the foregoing instrument on the day and  
year therein mentioned.

Given under my hand and seal of office.

My Commission Expires:

Notary Public



MY COMMISSION EXPIRES:  
August 27, 2002

LOAN NO: 531039402

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Loan No.: 531039402

Date: July 26, 2002

Property Address: 9859 Piney Ridge Dr.  
Olive Branch, MS 38654

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 104, Phase 2, Section A, Alexanders Ridge Subdivision, Section 27, Township 1 South, Range 6 West, as shown on plat of record in Plat Book 75, Page 29-30 in the Chancery Clerk's Office of DeSoto County, Tennessee, to which plat reference is hereby made for a more particular description of said property.