

Recording Information
Deed of Trust

Grantor: Edward and Danielle Foster
5025 Smith Road
Coldwater MS 38618
Phone # 901-628-7510
Phone # No Second Number

Grantee: City of Hernando Home Program
475 West Commerce Street
Hernando MS 38632
Phone #: NA
No Second Number

Type of Instrument: Home Program Deed of Trust

Prepared By and Return to:

Fearnley & Califf, PLLC
6389 Quail Hollow Road
Suite 202
Memphis TN 38120
Linda J. Mathis – Bar Number 9183
901-328-6800

Indexing Instructions: Lot 91, Section C, Northwood Hills Subdivision, Section 12,
T3S, R8W, DeSoto County Mississippi, Plat Book 66, Pages 49-50.

THIS INSTRUMENT PREPARED BY:

The maximum principal indebtedness for
Mississippi recording tax purposes is
\$0.00

Mattie J. Cushman
for City of Hernando HOME Program
475 West Commerce St, Hernando MS 38632

**HOME PROGRAM
HOMEOWNERSHIP DEED OF TRUST**

THIS DEED OF TRUST is made and entered into as of this 23rd day of November, 2009 by and between **Edward and Danielle Foster**, whose address is **355 Timberway South, Hernando, Mississippi 38632** ("Property Owner"), **Willis W. Johnson, Mayor, City of Hernando** and his successors and assigns (collectively, "Trustees"); and **The City of Hernando** whose address is **475 West Commerce Street, Hernando, Mississippi 38632** ("Grant Recipient").

RECITALS

Grant Recipient is receiving HOME Program funds from the Mississippi Development Authority ("MDA") through the HOME Investment Partnership Program (the "HOME Program") subject to the requirements of 24 C.F.R. Part 92, as amended (the "HOME Regulations"), the MDA HOME Program Description, the HOME contract agreement between Grant Recipient and MDA, as amended, and Alcorn County HOME Policies and Procedures, as amended

Grant Recipient has agreed to make HOME Program funds (the "HOME Investment") available to acquire a single family housing unit on the property located at **355 Timberway South, Hernando, Mississippi 38632** as more fully described in Exhibit A which is attached hereto and incorporated herein by this reference (the "Property") to be used as the principal resident by the Property Owner; and

Property Owner is a person of low or very low income as defined in the HOME Program Requirements; and

Property Owner desires to secure to Grant Recipient the payment of all amounts due under the HOME Program Grant Note of even date herewith, as may be subsequently amended in accordance with Section C thereof (collectively, the referenced note and any amendments thereto are referenced herein as the "Note") and the HOME Program Requirements and the due and punctual performance by Property Owner of each and every covenant, condition and agreement applicable to Property Owner and the Property under the HOME Program Requirements, the Note and this Deed of Trust.

NOW THEREFORE; for and in consideration of \$1.00 cash in hand paid and other valuable consideration, the receipt whereof is hereby acknowledged, the Property Owner does hereby grant and convey unto the Trustees in trust, with power of sale and with General Warranty, the Property, together with the housing unit and all buildings, improvements, equipment and fixtures now or hereafter erected thereon; all items of personal property now or hereafter used on or in connection with the Property; all easements and appurtenances benefiting the Property; all unearned hazard insurance premiums with respect to the Property; all rents royalties, revenues, income, issues and profits, which are hereby specifically assigned, transferred and pledged primarily and on a priority with the Property; all existing or future leases with respect to the Property and all amendments, modifications, extensions or renewals thereof; all sums due from third parties with respect to any taking of the Property by or under assertion of power of eminent domain, any damage or destruction to the Property by insured casualty or any other injury or damage to the Property; and all products or proceeds of the foregoing, all of which are hereby pledged and assigned, transferred and set over unto the Trustees, in trust forever, whether now due or hereafter to become due, all of which are incorporated by this reference into the defined term the "Property".

TO HAVE AND TO HOLD the Property with the appurtenances, estate, title, and interest thereto belonging to Trustees in trust forever.

But, this conveyance is made IN TRUST for the following uses and trusts, and for no other purpose, to wit:

A. PROPERTY OWNER'S PERFORMANCE

To secure to Grant Recipient the due and punctual performance of all obligations under the HOME Program Requirements and each and every covenant, condition, agreement and obligation of Property Owner contained in the Grant Note and this Deed of Trust.

B. PAYMENT OF INDEBTEDNESS

To secure to Grant Recipient the payments of all sums arising under this Deed of Trust or the Note or advanced to protect the security of this Deed of Trust, including attorneys' fees and all other fees and expenses incurred in connection with the performance or assertion of Grant Recipient's rights or duties as set forth in this Deed of Trust or the Grant Note.

All sums due and payable under the Grant Note, in the event of a default under the Grant Note or a default hereunder, shall be calculated in accordance with Paragraph A of the Grant Note:

Collectively, the indebtedness under the Note, Deed of Trust and all other indebtedness is referred to herein as the "Secured Indebtedness". The covenants, conditions, obligations and agreements of Property Owner contained in this Deed of Trust and in the Note are referred to herein as the "Secured Covenants".


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C. PROPERTY OWNER REPRESENTATIONS, WARRANTIES AND COVENANTS

Property Owner hereby represents warrants and covenants as follows:

1. Occupancy

Property Owner shall occupy the Property as Property Owner's principal residence for **Ten (10)** years from the date the Property is first available for occupancy (the "Affordability Period"). The date the Property is first available for occupancy is the date of conveyance of the herein described property to the Property Owner. Property Owner shall retain title to the Property during the entire Affordability Period as specified in the Grant Note

2. Warranty of Title

Property Owner lawfully possesses fee simple title to the Property; has good and valid right and power to convey the Property without the joinder or approval of any other person or entity whatsoever; shall forever warrant and defend the title to the Property against the claims and demands of all persons whomsoever; and shall execute such further assurances as required.

3. Payment and Performance

Property Owner shall pay, without demand or notice, all Secured Indebtedness and shall fully perform, without demand or notice, all Secured Covenants, when such performance is due, time being of the essence for both payment and performance.

4. Payment of Taxes and Utility Charges

Property Owner shall pay when due, all taxes and assessments both general and special, ground rents, fines, penalties, impositions, levies, dues and charges of every type or nature levied upon or assessed against the Property, including any personal property included thereon, or upon the Trustees or Grant Recipient's interest therein.

5. Payment and Discharge of Liens

Property Owner shall pay, when due, all claims of every kind and nature which might or could become a lien on the Property or any part thereof and shall not, at any time, create or allow to exist any lien on the Property or any part thereof of whatsoever kind or nature, other than this Deed of Trust, except the following:

- (a) liens for taxes and assessments which are not delinquent although by law are given the status of a lien; and
- (b) liens for taxes and assessments which are being contested by the Property Owner in good faith and by appropriate legal proceedings and for which Property Owner has posted such security for the payment of such contested claims as is requested by Grant Recipient.
- (c) liens for the Deed of Trust, Recapture Deed Restriction, and first lien by the initial lender other than the Holder.

6. Restrictions on Property

The Property Owner will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the Property on the basis of sex, race, color, religion or creed. The Property Owner shall file for record any instrument imposing restrictions on the Property as required by the HOME Program Requirements.

7. Reimbursement of Grant Recipient's or Trustees' Fees and Expenses

If the Trustees or Grant Recipient are made parties to or intervene in any action or proceeding affecting the Property or the title thereto or the interest of the Trustees or Grant Recipient under this Deed of Trust, or if Grant Recipient or the Trustees employ an attorney to foreclose this Deed of Trust, or authorizes the Trustees to conduct Trustees' sale proceedings hereunder, the Trustees and Grant Recipient shall be reimbursed by the Property Owner, immediately and without demand, for all reasonable costs, charges, fees and expenses, including attorney's fees and court costs, incurred by them or either of them in any such case whether or not suit be commenced, and the same shall be secured hereby as a further charge and lien upon the Property.

8. Insurance/Good Repair

Property Owner shall keep the housing unit on the Property insured by some reliable fire and/or hazard insurance company or companies for the maximum insurable amount against fire and all customary hazards, from the date of the issuance of a Certificate of Occupancy until the debt secured by this Deed of Trust is fully forgiven in accordance with the Note or this Deed of Trust and to have the loss made payable on the policy to Grant Recipient or the Trustee for the benefit of the Property Owner and Grant Recipient. Property Owner shall keep the housing unit and improvements on the Property in good repair and preservation and shall pay all taxes and assessments when due. If Property Owner fails to keep the housing unit and improvements on the Property in good repair and preservation or fails to pay all taxes and assessments when due, then the Trustee or Grant Recipient may do either, including, but not limited to, obtaining fire and/or hazard insurance, making necessary repairs, paying all taxes and assessments and may charge and treat any amount so expended as part of the debt secured by this Deed of Trust.



D. DELAY

No delay by Grant Recipient or the Trustees in exercising any right or remedy hereunder or otherwise afforded by law shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

E. SALE PROHIBITED

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1. Property Owner agrees, for herself, her heirs, her successors in interest, successors in title and permitted assigns, that as a condition of receiving the benefit of the HOME Investment, a sale of the Property at any time prior to the end of the Affordability Period (as defined in the Grant Note), in whole or in part, or any interest therein shall be a default under the Note and under this Deed of Trust, except as specified in Section B of the Grant Note. All amounts received as a result of any such sale shall be applied in accordance with this Section E. For purposes of this Section E, a foreclosure shall be treated as a sale.
2. If all or any part of the Property, or any interest in it, is sold prior to the end of the Affordability Period, as specified in the principal amount due under the Grant Note (the "Outstanding HOME Balance"), shall be immediately due and payable, except in cases where the conveyance is made to a person or family meeting the income and eligibility requirements, then the HOME subsidy may be assumed by such purchaser, otherwise payment is due as follows:
 - (a) If net proceeds from a sale of the Property are less than the Outstanding HOME Balance plus the homeowner investment, if any, then the net proceeds shall be split between Property Owner and Grant Recipient in accordance with 24 C.F.R. Section 92.254 (a)(5)(ii)(A)(3). The share of net proceeds to be paid to Property Owner, if any, and the share of net proceeds to be paid to Grant Recipient in full satisfaction of the Note, if any, shall be calculated in accordance with the HOME Program Requirements.
 - (b) If net proceeds exceed the Outstanding HOME Balance plus the homeowner investment, if any, net proceeds equal to the full amount of the homeowner investment, if any, shall be paid to Property Owner and all remaining net proceed shall be paid to Grant Recipient in full satisfaction of the Note.
 - (c) All net proceeds paid to Grant Recipient under (a) or (b) above shall be applied in accordance with the Working Agreement.
3. For purposes of this Section E, the following definitions shall apply:
 - (a) "net proceeds" shall mean the sales price for the Property less normal closing costs customarily paid by a seller.
 - (b) "homeowner investment" means an amount equal to the amount of down payment made by Property Owner, if any, plus the amount of capital improvements made subsequent to the date hereof, if any, with Property Owner's funds, as evidenced by receipts or cancelled checks detailing the capital improvements made. Capital improvements shall not include items of maintenance, deferred maintenance or cosmetic improvements.

F. EVENTS OF DEFAULT AND REMEDIES

Now, if the Property Owner shall keep and perform each of the covenants, conditions, obligations and agreements of the Property Owner contained in the Grant Note and this Deed of Trust, then, this trust conveyance shall be of no further force or effect as of November 24, 2019. But, if the Property Owner shall fail to keep and perform any of the covenants, conditions, obligations and agreements in the Grant Note and this Deed of Trust, and such defaults are not cured within ten (10) days from written notice to Property Owner specifying such default, then, and in any of such events, this trust conveyance shall remain in full force and effect, and at the option of the Grant Recipient, all remaining indebtedness not forgiven shall become due and payable at once, without notice, and the Trustee, acting in person or through an agent or agents duly appointed by him for this purpose, is hereby authorized and empowered, upon giving twenty (20) days notice by three (3) publications in any newspaper, daily or weekly, published in the county in which the Property is located, to sell the Property at the front door of the Courthouse in said county (or at such other place at said Courthouse as is usually and customarily used for the conduct of foreclosure sales) to the highest bidder for cash, at public outcry, free from the equity of redemption, any and all statutory rights of redemption including, without limitation, those provided in State Codes, as amended, or as may be hereinafter enacted, homestead, dower, courtesy, any elective share, and all other exemptions or marital rights of every kind, which are hereby expressly waived; and the Trustee is authorized and empowered to execute and deliver a deed to the purchaser. The sale may be adjourned from day to day by the Trustee or his agent or successor, by announcement at the Courthouse on the date the sale is originally set, or any adjournment thereof, and may be reset at a later date without any additional publication.

Grant Recipient may, at any time and from time to time, without assigning cause, in Grant Recipient's sole and absolute discretion, remove the Trustee herein named and appoint a successor to execute this trust, by an instrument in writing duly executed by Grant Recipient and filed for record in the county in which the Property is located and, upon the execution and filing of such instrument, the title herein conveyed to the Trustee shall be vested in the successor so appointed.

In the event of a sale of the Property under and by virtue of this trust, the Property Owner, and all persons holding under Property Owner, shall be and become the tenants at will of the purchaser from and after the execution and delivery of a deed to the purchaser.

Upon any sale under this Deed of Trust, the proceeds will be applied by the Trustee:

First: To pay all the costs and charges of executing this trust, including attorney's fees and the expenses of any litigation which may arise on account of the execution and enforcement of this trust, or in connection therewith as above provided.

Second: To repay all amounts advanced pursuant to the Grant Note or hereunder.

Third: To pay the remainder, if any, to Grant Recipient pursuant to HOME Program Requirements.

G. INCORPORATION

The provisions of the Note are incorporated herein by reference as fully and to the same extent as though set out herein verbatim.

H. REMEDIES CUMULATIVE

No remedy herein contained or conferred upon Grant Recipient or the Trustees is intended to be exclusive of any other remedy or remedies afforded by law or by the terms hereof to Grant Recipient or the Trustees, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

I. SUCCESSORS, ASSIGNS, GENDER, NUMBER

The covenants and agreements herein contained shall bind, and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any genders shall be applicable to all genders.

J. HEADINGS

The headings herein are inserted only for convenience of reference and in no way define, limit or describe the scope or intent of this Deed of Trust, or of any particular provision thereof, or the proper construction thereof.

K. EXPIRATION

This Deed of Trust shall be of no further force and effect upon the expiration of the Affordability Period described herein which 10 (ten) years from the date of execution is.

L. SEVERABILITY

The invalidity of any clause, part or provision of this Deed of Trust shall not affect the validity of the remaining portions hereof.

M. NOTICES

Unless otherwise set forth herein, all notices given pursuant to the Note or this Deed of Trust shall be deemed given when mailed. All notices hereunder shall be sent by certified or registered mail, postage prepaid, return receipt requested, to the parties at the addresses set forth above or to such different address or addresses as either party may notify the other from time to time in writing.

N. AMENDMENT

All actions, as deemed necessary by Grant Recipient, shall be taken to amend this Deed of Trust to comply with the HOME Program Requirements, and any and all applicable rules, regulations, policies, procedures, and rulings or other official statements pertaining to the HOME Program.

O. COMPLIANCE WITH APPLICABLE LAWS

The Property shall remain in compliance with all HOME Program Requirements and all other applicable federal, state or local laws, statutes, ordinances, codes, rules or regulations, as the same may be amended from time to time, for the entire Affordability Period.

P. GOVERNING LAW

This Deed of Trust shall be governed by the laws of the State of Mississippi and, where applicable, laws of the United States of America.

Q. ASSIGNMENT

No obligations hereunder may be assigned without the express written consent of Grant Recipient, which consent may be withheld at Grant Recipient's sole discretion

R. DEFINITIONS

All terms not otherwise defined herein shall have the meaning ascribed to them in the HOME Program Requirements.

Deleted: 1

IN WITNESS WHEREOF, Property Owner and Grant Recipient, through a duly authorized representative, have executed this Deed of Trust effective as of the date first written above.

PROPERTY OWNER(S):

Edward Foster
Danielle Foster

GRANT RECIPIENT:

BY:

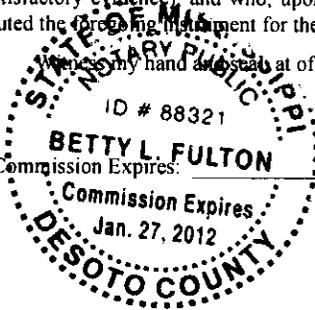
Mayor

STATE OF MISSISSIPPI)

COUNTY OF DESOTO)

Before me, Betty L. Fulton a Notary Public of the state and county mentioned, personally appeared Edward Foster, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that she is the within named bargainer and that she executed the foregoing instrument for the purpose therein.

Witness my hand and seal at office, this 23rd day of November, 2009.



Betty L. Fulton
Notary Public

My Commission Expires: _____

STATE OF MISSISSIPPI)

COUNTY OF DESOTO)

Before me, Betty L. Fulton a Notary Public of the state and county mentioned, personally appeared Danielle Foster, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he is the duly authorized representative of the within named bargainer and that he executed the foregoing instrument on behalf of the within named bargainer for the purpose therein.

Witness my hand and seal, at office, this 23rd day of November, 2009.



Betty L. Fulton
Notary Public

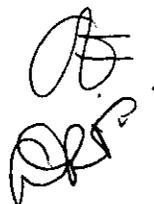
My Commission Expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 91, Section C, Northwood Hills Subdivision, in Section 12, Township 3 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 66, Pages 49-50, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Property Address: **355 Timberway South
Hernando, MS 38632**

Handwritten signature or initials in black ink, consisting of a stylized 'A' and 'B' or similar characters.