

## SHARED EQUITY NOTE

\_\_\_\_\_, 20\_\_\_\_

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[Property Address]

[insert identifying number for administrative tracking of note]

**THIS NOTE** (the “Note”) is given on \_\_\_\_\_, 20\_\_\_\_ by and between **[Borrower’s Name]** (whether one or more person, hereinafter referred to as “**Borrower**”) and the **Secretary of Housing and Urban Development**, whose address is 451 Seventh Street, SW, Washington, DC 20410 (hereinafter referred to as the “**Lender**”).

### RECITALS

**R1.** The Borrower has chosen to participate in the HOPE for Homeowners program as established by Title IV of the Housing and Economic Recovery Act of 2008 (the “HOPE Program”).

**R2.** As a participant in the HOPE Program, the Borrower has a Federal Housing Administration (FHA) insured first mortgage of even date herewith in the amount of \_\_\_\_\_ **[Insert amount of the HOPE Mortgage]** with \_\_\_\_\_ **[Insert First Lienholder Name]** secured by the Property as defined herein (the “HOPE Mortgage”).

**R3.** Pursuant to the terms and conditions of the HOPE Program, the Borrower shall grant the Lender an equity and appreciation interest in the Property by executing a Shared Equity Note, Shared Appreciation Note, Shared Equity Mortgage (the “SEM”) and Shared Appreciation Mortgage (the “SAM”) of even date herewith with the SEM and SAM to be secured by a second and third priority lien against the Property.

NOW, THEREFORE, in exchange of good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged and the mutual covenants herein contained, the parties do hereby agree as follows:

1. **Borrower’s Promise to Pay.** Upon the refinance of the HOPE Mortgage, a sale or any other disposition of all or any part of the Property including the sale or disposition of a beneficial interest in the Property (the “Maturity Event”) or an Event of Default, the Borrower hereby promises to pay to the order of the Lender principal based on Equity pursuant to the following schedule:

- (A) If the Maturity Event or Event of Default occurs during the period that begins on the date the HOPE Mortgage becomes FHA-insured (the “Date of Insurance”) and ends one (1) year after the Date of Insurance, the Borrower shall pay the Lender one hundred percent (100%) of the Equity.
- (B) If the Maturity Event or Event of Default occurs during the period that begins one (1) year following the Date of Insurance and ends two (2) years after such Date of Insurance, the Borrower shall pay the Lender ninety percent (90%) of the Equity.
- (C) If the Maturity Event or Event of Default occurs during the period that begins two (2) years following the Date of Insurance and ends three (3) years after such Date of Insurance, the Borrower shall pay the Lender eighty percent (80%) of the Equity.
- (D) If the Maturity Event or Event of Default occurs during the period that begins three (3) years following the Date of Insurance and ends four (4) years after such Date of Insurance, the Borrower shall pay the Lender seventy percent (70%) of the Equity.
- (E) If the Maturity Event or Event of Default occurs during the period that begins four (4) years following the Date of Insurance and ends five (5) years after such Date of Insurance, the Borrower shall pay the Lender sixty percent (60%) of the Equity.
- (F) If the Maturity Event or Event of Default occurs during any period that begins five (5) years following the Date of Insurance, the Borrower shall pay the Lender fifty percent (50%) of the Equity.

Maturity Event shall not include the following:

- (a) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- (b) the granting of a leasehold interest of three (3) years or less not containing an option to purchase;
- (c) a transfer to a relative resulting from the death of the Borrower;
- (d) a transfer where the spouse or children of the Borrower become an owner of the property;

(e) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the Borrower becomes an owner of the property; or

(f) a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

Lender agrees that if the HOPE Mortgage is determined to be ineligible for insurance under the National Housing Act, the Note shall be void and the Lender shall execute and record a release for the SEM. A written statement of any authorized agent of the Lender dated subsequent to the date hereof, declining to insure the HOPE Mortgage, shall be deemed conclusive proof of such ineligibility.

2. **Equity.** (a) In the event the Maturity Event is a refinance, sale or any other disposition method of the Property excluding sales described in (b) of this paragraph to the or an Event of Default, the Property's equity is in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) (the "Equity"). **[Insert amount equivalent to the difference between the appraised value of the Property at origination of the HOPE Mortgage and the amount of the HOPE Mortgage.]**

(b) In the event the Maturity Event is a sale of the Property to one or more persons where such person or persons are not a related party to the Borrower as defined in 24 CFR §4001.07 and the gross proceeds from sale of the Property are less than the appraised value at the origination of the HOPE Mortgage, Equity shall be the equivalent of \_\_\_\_\_ (\$ \_\_\_\_\_) **[Insert equity amount from previous paragraph (Difference between the appraised value of the Property at origination of the HOPE Mortgage and the amount of the HOPE Mortgage).]** less allowable settlement costs. Allowable settlement costs consist of the following:

- real estate sales commission consistent with the prevailing rate but not to exceed six percent (6%) of the contract sales price;
- local/state transfer tax stamps and other closing costs customarily paid by the seller and
- other actual, customary closing costs customarily paid by the seller not to exceed two percent (2%) of the contract sales price,

3. **Interest.** This Note shall not bear interest unless the principal amount due upon occurrence of a Maturity Event is not paid to Lender. If principal amount due is not paid, the principal sum due pursuant Paragraph 1 of this Note shall bear interest from the date of the Maturity Event at the rate of the current value of funds to the United States Treasury in effect on the date of the Maturity Event. The current value of funds rate is prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins.

4. **Mortgage.** This Note is secured by a SEM, deed of trust, or similar security instrument of even date herewith between Borrower and Lender (the "Security Instrument"). The Security Instrument encumbers certain real property located at **[Insert**

**Property Address** (the “Property Address”) and more fully described in the Security Instrument (the “Property”).

5. **Payment.**

(a) No regular monthly payments are due under this Note. A payment is due upon the occurrence of a Maturity Event pursuant to the terms and schedule provided in Paragraph 1 of this Note.

This Note is a deferred contingent liability. Principal and any interest on this Note and all other sums which may or shall become due under this Note and the Security Instrument, shall be due and payable upon the occurrence of the Maturity Event (Maturity Date) if (1) not otherwise satisfied in accordance with the provisions of the Security Instrument, or (2) there is an Event of Default (defined below).

(b) Payment shall be made at Single Family Notes/H4H, PO Box 105053, Atlanta, GA 30348-5053, or at such place as Lender may designate in writing by notice to Borrower.

6. **Prepayment.** Borrower shall have the right to prepay this Note in whole.

7. **Default.** The term “Event of Default” shall mean the violation of any term of this Note or the Security Instrument. The terms of the Security Instrument are incorporated herein by reference as though set forth herein.

8. **Acceleration.** Upon the occurrence of any Event of Default, Lender may declare, without notice, the principal and interest on this Note, together with all other sums which may or shall become due under this Note and the Security Instrument, immediately due and payable.

9. **Payment of Lender’s Costs and Expenses.** If Lender has required immediate payment in full, as describe above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorney’s fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at a rate of the current value of funds to the United States Treasury in effect on the date of the date of disbursement and, at the option of Lender, shall be immediately due and payable. The current value of funds rate is prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins.

10. **Modifications.** This Note shall not be modified, amended, changed, discharged, or terminated orally. This Note may only be modified, amended, changed, discharged, or terminated by an agreement in writing signed by the party against whom enforcement of such modification, amendment, change, discharge, or termination is sought.

11. **Notices.** Any notice to Borrower provided for in this Note shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of

another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

12. **Time of the Essence.** Time is of the essence as to all dates set forth herein.

13. **Waivers.** Borrower and all endorsers, sureties and guarantors jointly and severally waive presentation for payment, demand for payment, notice of nonpayment, notice of protest, notice of dishonor, protest, notice of protest, and any and all lack of diligence or delays in collection or enforcement of this Note.

14. **Successors and Assigns Bound.** The covenants and agreements of this Note shall bind and benefit the successors and assigns of Lender and Borrower. The covenants and agreements of Borrower under this Note are not assignable without the prior written consent of Lender.

15. **Governing Law; Severability.** This Note shall be governed by Federal law. In the event that any provision or clause of this Note or the Security Instrument conflicts with applicable law, such conflict shall not affect other provisions of this Note or the Security Instrument which can be given effect without the conflicting provision. To this end the provisions of this Note and the Security Instrument are declared to be severable.

16. **Authority to Execute.** The representative of Borrower executing this Note represents that he/she has full power, authority and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of Borrower.

BY SIGNING BELOW, Borrower accepts and agrees under seal to the terms and covenants contained in this Note.

**BORROWER:**

By: \_\_\_\_\_ (SEAL)

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

By: \_\_\_\_\_ (SEAL)

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

**[NOTE: THE FOLLOWING IS A SAMPLE MODEL MORTGAGE FORM THAT IS NOT ADAPTED FOR STATE LAW. THE FHA-APPROVED MORTGAGEE EXTENDING THE FIRST MORTGAGE IS RESPONSIBLE FOR ADAPTING PROVISIONS WITHIN THIS MODEL FORM TO STATE LAW ON BEHALF OF HUD. THE GENERAL SUBSTANCE OF EACH PROVISION SHOULD NOT CHANGE FROM THE MODEL FORM. IF THERE IS A CONFLICT BETWEEN SUBSTANTIVE CONTENT OF A PARTICULAR PROVISION AND STATE LAW, THE MORTGAGEE SHALL CONTACT FHA FOR FURTHER GUIDANCE.]**

**After Recording Return To:**

**[Insert where to return recorded document]**

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

**[insert identifying number for administrative tracking of mortgage]**

### **SHARED EQUITY MORTGAGE**

**THIS SHARED EQUITY MORTGAGE** (the “SEM”) is given on \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ **[Insert Borrower’s Name]** (whether one or more person, hereinafter referred to as “Borrower”) and the **Secretary of Housing and Urban Development**, whose address is 451 Seventh Street, SW, Washington, DC 20410 (hereinafter referred to as the “Lender”). **[Insert the following language if the SEM is registered with MERS... “with Mortgage Electronic Registration Systems, Inc., organized and existing under the laws of Delaware, with an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS (“MERS”) acting solely as a nominee for Lender and Lender’s successors and assigns. FOR PURPOSES OF RECORDING THIS MORTGAGE, MERS IS THE MORTGAGEE OF RECORD.”]**

### **RECITALS**

**R1.** Borrower is the owner of property located in \_\_\_\_\_ County, \_\_\_\_\_ more particularly described on **Schedule A** annexed hereto which has the address of \_\_\_\_\_ [Street], \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ [Zip code], (the “Property Address”).

**R2.** The Borrower has chosen to participate in the HOPE for Homeowners program as established by Title IV of the Housing and Economic Recovery Act of 2008 (the “HOPE Program”).

**R3.** As a participant in the HOPE Program, the Borrower has an FHA-insured first mortgage of even date herewith in the amount of \_\_\_\_\_ **[Insert amount of the HOPE Mortgage]** with \_\_\_\_\_ **[Insert First Lienholder Name]** secured by the Property as defined herein (the “HOPE Mortgage”).

**R4.** Pursuant to the terms and conditions of the HOPE Program, the Borrower shall grant the Lender an equity and appreciation interest in the Property by executing a Shared Equity Note, Shared Appreciation Note, Shared Equity Mortgage (the “SEM”) and Shared Appreciation Mortgage (the “SAM”) of even date herewith with the SEM and SAM to be secured by a second and third priority lien against the Property.

NOW, THEREFORE, in exchange of good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged and the mutual covenants herein contained, the parties do hereby agree as follows:

1. Borrower promises to pay the principal sum stipulated in the Note and all other sums which may or shall become due under this SEM or the Note, upon the occurrence of a Maturity Event (the “Maturity Date”), if (a) not otherwise satisfied in accordance with the provisions of this SEM or (b) there is an Event of Default (defined below).

2. This SEM secures (a) the repayment of the debt evidenced by the Note; (b) the performance of Borrower’s promises and agreements under this SEM and the Note. For this purpose, Borrower hereby mortgages, warrants, grants, and conveys to Lender a security interest, with power of sale, in the Property;

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this SEM.

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

#### UNIFORM COVENANTS

3. **Payment of Principal and Interest.** (A) Upon the refinance of the HOPE Mortgage, sale or any other disposition of all or any part of the Property including the sale or disposition of a beneficial interest in the Property (the “Maturity Event”) or an Event of Default, the Borrower hereby promises to pay to the order of the Lender principal based on Equity pursuant to the following schedule and any interest due thereon:

- (i) If the Maturity Event or Event of Default occurs during the period that begins on the date the HOPE Mortgage becomes FHA-insured (the “Date of Insurance”) and ends

one (1) year after the Date of Insurance, the Borrower shall pay the Lender one hundred percent (100%) of the Equity.

- (ii) If the Maturity Event or Event of Default occurs during the period that begins one (1) year following the Date of Insurance and ends two (2) years after such Date of Insurance, the Borrower shall pay the Lender ninety percent (90%) of the Equity.
- (iii) If the Maturity Event or Event of Default occurs during the period that begins two (2) years following the Date of Insurance and ends three (3) years after such Date of Insurance, the Borrower shall pay the Lender eighty percent (80%) of the Equity.
- (iv) If the Maturity Event or Event of Default occurs during the period that begins three (3) years following the Date of Insurance and ends four (4) years after such Date of Insurance, the Borrower shall pay the Lender seventy percent (70%) of the Equity.
- (v) If the Maturity Event or Event of Default occurs during the period that begins four (4) years following the Date of Insurance and ends five (5) years after such Date of Insurance, the Borrower shall pay the Lender sixty percent (60%) of the Equity..
- (vi) If the Maturity Event or Event of Default occurs during any period that begins five (5) years following the Date of Insurance, the Borrower shall pay the Lender fifty percent (50%) of the Equity.

(B) In the event the Maturity Event is a refinance, sale or any other disposition method of the Property excluding sales described in (C) of this Paragraph or an Event of Default, the Property's equity is in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) (the "Equity"). **[Insert amount equivalent to the difference between the appraised value of the Property at origination of the HOPE Mortgage and the amount of the HOPE Mortgage.]**

(C) In the event the Maturity Event is a sale of the Property to one or more persons where such person or persons are not a related party to the Borrower as defined in 24 CFR §4001.07 and the gross proceeds from sale of the Property are less than the appraised value at the origination of the HOPE Mortgage, Equity shall be the equivalent of \_\_\_\_\_ (\$\_\_\_\_\_) **[Insert equity amount from previous paragraph (difference between the appraised value of the Property at origination of the HOPE Mortgage and the amount of the HOPE Mortgage).]** less allowable settlement costs. Allowable settlement costs consist of the following:



- (i) real estate sales commission consistent with the prevailing rate but not to exceed six percent (6%) of the contract sales price;
- (ii) local/state transfer tax stamps and other closing costs customarily paid by the seller and
- (iii) other actual, customary closing costs customarily paid by the seller not to exceed two percent (2%) of the contract sales price.

(D) Maturity Event shall not include the following:

- (i) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- (ii) the granting of a leasehold interest of three (3) years or less not containing an option to purchase;
- (iii) a transfer to a relative resulting from the death of the Borrower;
- (iv) a transfer where the spouse or children of the Borrower become an owner of the property;
- (v) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the Borrower becomes an owner of the property; or
- (vi) a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(E) The Note shall not bear interest unless the principal amount due upon occurrence of a Maturity Event is not paid to Lender. If principal amount due is not paid, the principal sum due pursuant Paragraph 1 of the Note shall bear interest from the date of the Maturity Event at the rate of the current value of funds to the United States Treasury in effect on the date of the Maturity Event. The current value of funds rate is prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins.

(F) Lender agrees that if the HOPE Mortgage is determined to be ineligible for insurance under the National Housing Act, the Note shall be void and the Lender shall execute and record a release for the SEM. A written statement of any authorized agent of the Lender dated subsequent to the date hereof, declining to insure the HOPE Mortgage, shall be deemed conclusive proof of such ineligibility.

4. **Payment of Taxes, Insurance, and Other Charges.** Borrower shall pay all (a) taxes and special assessments levied or to be levied against the Property; (b) leasehold payments or ground rents on the Property; (c) Community Association Dues, Fees, and Assessments, (c) governmental or municipal charges, fines, and impositions; (d) other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property. The phrase "Community Association Dues, Fees, and

Assessments” means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization. Borrower shall pay these obligations on time directly to the entity owed the payment. If failure to pay would adversely affect Lender’s interest in the Property, upon Lender’s request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments, fails to perform any other covenants and agreements contained in this SEM, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation, or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes and hazard insurance.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this SEM. These amounts shall bear interest from the date of disbursement at a rate of the current value of funds to the United States Treasury in effect on the date of the date of disbursement and, at the option of Lender, shall be immediately due and payable. The current value of funds rate is prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins.

Borrower shall promptly discharge any lien which has priority over this SEM or is subordinate to this SEM unless the lien has priority as provided in Paragraph 9. If Lender determines that any part of the Property is subject to a lien that may either attain priority over this SEM or be subordinate to this SEM, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.

**5. Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

If any improvement is located within the special flood hazard area, Borrower shall obtain flood insurance covering all improvements on the property, whether now in existence or subsequently erected, in an amount equal to (a) the value of the Property, or (b) the maximum limit of coverage made available under the National Flood Insurance Act of 1968, whichever is less. If any improvement on the Property is located within a special flood hazard area, Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by law. The insurance policies and any renewals, regardless of whether

such policies and renewals are required by Lender, shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this SEM, or (b) to the restoration or repair of the damaged Property. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this SEM shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this SEM or other transfer of title to the Property that distinguishes the indebtedness, all rights, title and interests of Borrower in and to insurance policies in force shall pass to the purchaser.

6. **Maintenance and Protection of Property.** Borrower shall not commit, or permit, any waste on, destruction of, or damage to the Property. Borrower shall not allow the Property to deteriorate, reasonable wear and tear excepted. Borrower shall, at all times, maintain the Property. Borrower shall comply with all applicable Federal, state, and local statutes, ordinances, codes, regulations, requirements, and restrictive covenants, if any, upon the use of the Property. Borrower shall, to the satisfaction of Lender, promptly repair or replace any of the Property damaged by fire or other casualty. Lender and its representatives shall have the right to inspect the Property from time to time at any reasonable hour.

7. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence upon execution of this SEM and shall continue to occupy the Property as Borrower's principal residence unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

8. **Prepayment; Release of Security Instrument.** Borrower shall have the right to prepay the Note in whole only. The Note shall be considered satisfied and this

SEM shall be released only upon receipt of principal and interest due Lender pursuant to Paragraph 1 and 3 of the Note.

9. **Priorities.** Notwithstanding any other provision to the contrary, this SEM is superior to all liens on the Property, other than the HOPE Mortgage. Additionally, during the first five (5) years of the HOPE Mortgage, the Borrower shall not grant any junior lien interest in the Property other than a SAM to the Lender or, upon the Borrower obtaining Lender's prior written consent, a security instrument securing a loan that is essential to preserve, protect, and repair the Property (the "P&P Loan") and fulfills the following criteria:

- (A) the condition to be repaired represents a health or safety hazard;
- (B) failure to make the repair will cause the property condition to deteriorate;
- (C) the cost of the proposed repair is reasonable for the geographic market area;
- (D) the repairs are not primarily cosmetic or represent routine maintenance;
- (E) the P&P Loan is a closed-end loan under Federal Reserve Board's Regulation Z;
- (F) the P&P Loan does not reduce the amount of the Lender's equity share in the Property (the sum of the unpaid principal balance and accrued interest on the HOPE Mortgage upon origination of the P&P Loan and the original principal balance of the P&P Loan is less than the sum of (i) the appraised value of the Property, as determined by Lender, after completion of the proposed preservation and protection repair and (ii) HUD's share of the Equity created upon origination of the HOPE Mortgage as if a sale of the Property occurred on date of origination of the P&P Loan.); and the sum of the unpaid principal balance and accrued interest on the HOPE mortgage and the original principal balance of the new mortgage debt is less than the sum of (i) the appraised value of the property after completion of the proposed repair and (ii) HUD's share of the new equity created upon origination of the HOPE mortgage as if a sale of the property occurred on date of origination of the new mortgage debt.
- (G) the total cumulative debt secured by the Property does not exceed ninety-five percent (95%) of the Property's new appraised value.

10. **Fees.** Lender may collect fees and charges authorized by this SEM or the Note.

11. **Default.** The term “Event of Default” shall mean the occurrence of any one or more of the following:

(A) Any materially false or inaccurate information on any form or report submitted to Lender;

(B) A failure to provide any material information on any form or report submitted to Lender;

(C) A default under any security instrument (other than this SEM) that encumbers the Property;

(D) A failure to perform any other obligations in this SEM; or

(E) A failure to perform any obligations under the Note.

12. **Grounds for Acceleration of Debt.** Upon the occurrence of any Event of Default, Lender may declare, without notice, immediately due and payable the principal and interest due on the Note and all other sums which may or shall become due under this SEM or the Note.

13. **Time of the Essence.** Time is of the essence as to all dates set forth herein.

14. **Waivers.** Borrower and all endorsers, sureties and guarantors jointly and severally waive presentation for payment, demand for payment, notice of nonpayment, notice of protest, notice of dishonor, protest, notice of protest, and any and all lack of diligence or delays in collection or enforcement of this SEM.

15. **Successors and Assigns Bound.** The covenants and agreements of this SEM shall bind and benefit the successors and assigns of Lender. The covenants and agreements of Borrower under this Note are not assignable without the prior express written consent of Lender. Borrower covenants and agreements shall be joint and several.

16. **Modifications.** This SEM shall not be modified, amended, changed, discharged, or terminated orally. This SEM may only be modified, amended, changed, discharged, or terminated by an agreement in writing signed by the party against whom enforcement of such modification, amendment, change, discharge, or termination is sought.

17. **Notices.** Any notice to Borrower provided for in this SEM shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this SEM shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

18. **Governing Law; Severability.** This SEM shall be governed by Federal law. In the event that any provision or clause of this SEM or the Note conflicts with applicable law, such conflict shall not affect other provisions of this SEM or the Note which can be given effect without the conflicting provision. To this end the provisions of this SEM and the Note are declared to be severable.

19. **Copy of Mortgage.** Borrower acknowledges that it has received a true copy of this SEM, read this SEM, and executed this SEM as of the date at the top of the first page.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph "Environmental Law" means Federal law and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

21. **Authority to Execute.** The Borrower executing this SEM represents that he/she has full power, authority and legal right to execute and deliver this SEM and that the debt secured hereunder constitutes a valid and binding obligation of Borrower.

#### NON-UNIFORM COVENANTS.

Borrower and Lender further covenant and agree as follows:

22. **Foreclosure Procedure.** **[For illustration only. Mortgagee needs to adapt this provision to state law so as to ensure that HUD has full enforcement authority for a shared equity mortgage under state law.]** If Lender requires immediate payment in full under Paragraph 12, Lender may invoke the power of sale and any other remedies permitted by applicable law.

If Lender invokes the power of sale, Lender shall give notice of sale to Borrower in the manner provided in Paragraph 17. Lender shall publish and post the notice of sale, and the Property shall be sold in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorney's fees; (b) to all sums secured by the HOPE Mortgage; (c) to all sums secured by this SEM; and (c) any excess to the person or persons legally entitled to it.

**[The following language is mandatory in all cases.]** If the Lender's interest in this Security Instrument is held by the Secretary of Housing and Urban Development (the Secretary) and the Lender requires immediate payment in full under Paragraph 12, the Lender may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Lender of any rights otherwise available to a Lender under this paragraph or applicable law.

23. **Riders to this Security Instrument.** The following Riders are to be executed by Borrower [check box as applicable] and the covenants of each such Rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument:

- Other [specify]:

\_\_\_\_\_

BY SIGNING BELOW, Borrower accepts and agrees under seal to the terms contained in this Security Instrument and in any Rider(s) executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_

BORROWER:

By: \_\_\_\_\_ (SEAL)

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

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

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

