



# Town of Cary

## Housing Rehabilitation Assistance Program

**Town of Cary  
Planning Department  
Housing & Community Development Division**

**August, 2016**

# HOUSING REHABILITATION PROGRAM GUIDELINES

Town of Cary  
Planning Department  
Housing and community  
Development Division

## PROGRAM SUMMARY

The principal purpose of the Town of Cary's Housing Rehabilitation Assistance Program **HARP** (the "Program") is to increase and maintain the supply of decent, safe and sanitary affordable housing in the Town. The Program is funded with Town of Cary Affordable Housing Annual Allocations and Federal Community Development Block Grant (CDBG) and from the U.S. Department of Housing and Urban Development (HUD).

### Eligible Applicants

Eligible applicants include income-eligible owners of occupied Single Family Dwellings, Town Homes, Apartments, and Condominiums located within the incorporated area of the corporate limits of the Town of Cary and also any of the foregoing where a Life Estate in the subject property has been granted.

### Funding assistance

Town of Cary and/or CDBG funding assistance for eligible applicants is in the form of a Deferred Payment Loan (DPL) up to a maximum of \$50,000 at zero percent (0%) interest with full repayment forgiveness being applied at the completion of the qualifying period (5, 7 or 10 years as applicable) or full repayment being due should there be a sale or transfer of the property within the qualifying period.

### Eligible work

The HARP program allows for loan assistance to be used fund necessary repairs. Improvements and modifications to rectify identified hazards or to allow for rehabilitation work to repair/replace or upgrade existing structural or service components necessary to allow for the continued use of the property as a dwelling unit. Examples of such work would be roof replacement, heating/cooling system replacement, repair of structural support, lead paint or asbestos hazard abatement, Window and external cladding renewal, electrical, water or sewer service replacement. Deck and porch repair or renewal, tree removal (where tree is threatening the structural integrity of the house)

### Emergency work

Eligible project work is only considered an emergency *if* not addressing the issue will seriously adversely impact the health and safety of the residents. Examples of emergency include: lack of running water, a non-functioning sewer line, dangerous electrical wiring or hazardous structural failure, serious Asbestos exposure or lead paint exposure (where a child six or under is normally resident in the property), substantial roof damage or exterior damage or heating system failure.

---

## **Program terms, conditions, definitions and procedures:-**

### **Eligible Applicants**

Eligible applicants include the following:

**Owner occupants:** If the property is owner occupied, the property owner's household income must be at or below eighty percent (80%) of area median income, as defined by HUD for the Raleigh/Cary MSA, and published on an annual basis. Income and household size verification by Program staff is required. For the purposes of determining eligibility, an applicant's household size is established at the time the application is approved by Program staff for funding. (See Attachment C: Determining Income Eligibility.) Income eligibility is required for Program assistance.

**Application.** A preliminary application must be completed by all person(s) who hold title to the property. This includes listing all household members, their income and asset information, and household bills including mortgage and utility payments. In addition HUD requires that all agencies receiving federal funds collect applicant demographics.

**Demographic reporting;** Applicants will be requested to identify race and ethnicity at the time of application. This is to meet federal reporting requirements and is not considered a part of the application review.

**Income.** The Town requires that all households participating in the Housing Assistance Rehabilitation Program (HARP) meet specific income limits as determined by HUD, based upon household size. To be eligible to participate in the Program, household income must not exceed 80 percent (80%) of the median income for the Raleigh/Cary MSA, which is adjusted for family size.

**Calculating Income.** Annual income is the gross amount of income that is anticipated to be received by all members of the household during the year prior to the application being submitted. Income includes all wages, financial assistance from Social Security, Veterans Administration, alimony, child support, unemployment, earning on all assets over 5K and any other income from any other sources shall be considered as household income. To determine a household's income a "snapshot" of the household's current circumstances is used based on the information drawn from the following sources: a. most recent pay stubs b. Retirement, disability or social security award letters c. Most recent federal income tax return d. Last two months of all bank statements-checking, savings and any other accounts.

**Verifying Household Members and Assets.** Assets may be verified utilizing third party verification format and other such procedures as necessary. Proof of family or household where requested may include but are not limited to the following: a. Birth certificates for minors b. Income Taxes Returns c. Driver's license or state issued identification for adults d. Custody orders for minors or disabled adults e. School records for minors

For all households applying for the Program all persons on title are considered household members and all persons in residence are considered household members for the purpose of determining eligibility

**Sole or principal residence:** The property which is the subject of the application must be the applicant's sole or primary residence and must be have occupied on a continuous basis for a period of one year or more prior to the date of application.

**Occupancy Requirements.** If borrower ceases to occupy the property as his/her legal residence, repayment of the loan balance shall be due and payable immediately. If the owner dies, the surviving spouse may assume the loan under the same conditions of the original contract. If there is no surviving spouse, the loan balance is due upon estate settlement or sale of home. Borrower is required at closing to certify in writing the home will be owner occupied for the duration of the loan. Annually the borrower must sign a statement they are still living in the home as their primary residence and provide a copy of a utility billing statement. A formal verification of ownership such as a warranty deed, is required.

**Firsttime homebuyers:** Firsttime homebuyers, who are owners of eligible properties, and received down payment assistance to acquire a housing unit, are eligible to apply for Program assistance.

**Eligible properties:** Owneroccupied Single Family Dwellings, Town Homes, Apartments, Condominiums & any of the foregoing where a Life Estate has been granted

**Taxes and Insurance;** The property must be current on property taxes and proof in the form of a property tax receipt must be retained by the Program in each participant's file. The property must have hazard insurance and maintain hazard insurance through the term of the loan and proof of insurance must be provided and retained in the applicant's file. Insurance must be adequate to all loans on the property. Residential areas that are designated by FEMA as flood-prone are required to maintain flood insurance in an amount adequate to all loans on the property. If property insurance and property taxes are not kept current on the home during the term of the loan the loan can be made payable in full.

**Emergency Assistance protocol:** Emergency assistance is available to income -eligible homeowners, or a nonprofit housing organization or other affordable housing provider for their rental units). An emergency is defined as a situation that presents an immediate threat to the integrity of a structure or the health and/or safety of the property's occupants as determined by Program staff and/or the Town Minimum Housing Officer and/or the inspections & Permits or Fire Department.

#### **Deferred Loan and Repayment terms:**

1. **TERMS OF DEFERRED LOAN.** The terms of this Loan shall be for a period not to exceed ten (10) years from the date of Town's formal approval of the completed Project

**Forgiveness of loan.** On or after the specified qualifying repayment period from the date of the issue of the Certificate of Completion the debt associated with this Loan and the related Promissory Note, shall be forgiven in its entirety subject to the following conditions:

- *All repairs and/or improvements have remained in their original condition as approved by the Town*
- *The Borrower has not sold or transferred the property to another entity.*

**Repayment requirements.** In the event the completed repairs or improvements are removed or modified during the qualifying loan period the borrower may be required to repay in full the remaining monthly prorated amount of the loan. The amount of the prorated amount due shall be calculated by prorating the total amount due over the months of the qualifying period from the completion of the Project and calculating the number of months remaining in the qualifying period. In the event the property is sold or transferred before the ten year period expires, the entire and non-prorated amount of payment indicated on the Promissory Note shall be due and payable to the Town immediately following Borrower's sale or transfer of the property.

---

## Hazard Abatement

**Risk assessment:** An initial risk assessment is required for all projects. The risk assessment will identify any lead paint or other potential hazards (e.g. asbestos, radon) requiring mitigation, remediation or abatement control measures.

**Lead paint Abatement & Remediation:** Town of Cary and/or CDBG Financial assistance for lead paint abatement, lead paint remediation and lead pipe renewal is considered an eligible expense within the terms of the program. Costs that are associated with the installation of replacement windows, replacement doors and siding, etc., are also considered as an eligible expense if they are required as part of the abatement or remediation process. If required, Program assistance will also be available to abate or remediate lead paint or other identified hazards in the common areas of two-family or multi-family properties (porches, front entryways, common hallways, etc.).

**Lead paint Inspection:** A lead paint inspection and risk assessment must be conducted on every property built prior to 1978 by a qualified and NC licensed inspector. Specifications for abatement or remediation under the State will be consistent with the state mandated protocols either the N.C. Lead Hazard Management Program for Abatement Activities (LHMP) or the N.C. Lead Hazard Management Program for Renovation, Repair and Painting (LHMP-RRP) and any other applicable state and/or federal laws. Properties constructed after 1978 are not required to undergo testing and are assumed not to contain lead hazards. The full cost of lead paint hazard reduction will be provided to low- and moderate-income owner-occupied 1-4 family structures.

**Lead paint abatement & remediation:** An inspection will be completed by a qualified North Carolina Certified Lead Professional inspector and will identify the levels of hazard, prioritize the risk, and recommend measures of abatement or renovation and remediation appropriate to mitigate the assessed risk and commensurate with the level of Program assistance available. All structures where children six years old and younger reside or are present on a regular extended basis will normally receive abatement as the standard risk mitigation protocol within the project. All deleading projects will be performed by appropriately certified and insured, state recognized deleading contractors.

**Asbestos abatement:** Where a potential asbestos hazard is identified an inspection of the affected property must be made by a qualified and Accredited N.C Asbestos Professional, state certified in asbestos inspection and remediation under the North Carolina Asbestos Hazard Management Program (AHMP). The inspection report will determine all areas of asbestos removal or encapsulation. Contractors selected to perform the abatement work must be qualified, certified and insured to perform such work. A qualified and certified industrial hygienist hired independently by the Program will monitor the project and conduct all required air sampling tests.

**Mold remediation:** Where mold is thought to be present an inspection of the affected property will be made by an appropriately qualified professional. The inspection report will determine the location, cleanup method and remediation procedures to prevent moisture and mold growth from reoccurring. Where necessary a certified industrial hygienist will provide air and dust analyses and clearance where necessary.

**Radon testing:** Radon is a naturally occurring, radioactive gas found in soil and rock. It seeps into homes through cracks in the foundation, walls and joints. In some parts of the country, ground water can also be a major source of radon. As part of the Town of Cary **HARP** program protocols we recommend that all homes should be tested for radon. An initial test will be undertaken by program consultant staff, if elevated levels are detected a further test will be undertaken by a certified radon measurement professional. Where required radon mitigation measures as

recommended by the NC Radiation Protection Section (RPS) of the State Department of Health and Human Services. Where mitigation is required due to elevated Radon levels then this work will be undertaken in accordance with the protocols developed by the NC Radon program.

### **Project Work: Process Summary**

After the owner is determined eligible for Program assistance, Program staff will schedule a meeting to conduct a preliminary inspection and discuss work items the owner may want to include in the project. Depending on the age of the building and the nature of the work to be done, an inspection by a certified lead inspector is required. If the property is built prior to 1978 a risk assessment by a certified lead inspector is required.

Program staff will prepare work specifications and a cost estimate of eligible rehabilitation items for the owner's review.

Program staff will meet with the owner to make necessary changes to the specifications and will obtain the owner's approval of the work write-up.

Bids will be obtained from contractors through a competitive bidding process. The Town reserves the right to reject any and all bids or estimates of contractors and to waive any irregularities or items if it is in its best interest to do so

Program staff will review all bids received with property owners. The Town will base its funding on the low bid amount, provided that it is a responsible bid. Owners may select any bidder provided that they pay the difference between the low bid and the selected bid. The owner must confirm the contractor within 10 days of the bid opening.

After a title search has been performed and existing encumbrances identified, Program staff will prepare closing documents (mortgage note, mortgage and Program funding agreement, as applicable) between the owner and the Town, and the contract between the owner and the selected contractor. Documents are subject to the review and approval of the Town Law Department. Note: rehabilitation funds will not be provided if there is an existing reverse mortgage.

If there are no deficiencies in the work and all Town-required permits have been signed by the appropriate Town Inspector(s), Program staff will process a final payment.

If any deficiencies are found during the final inspection, they will be communicated to the contractor through a punch list signed by the owner. The punch list will be prepared by Program staff. Once all punch list items are satisfactorily completed, Program staff and the property owner will approve the final payment.

### **Amount and Types of Assistance**

All Town of Cary *RHAP* and *HUD-CDBG* Program funding assistance will be made available in the form of a Deferred Payment Loan (DPL) up to \$50,000.00.

DPLs do not require payments during the term and accrue zero percent (0%) interest. The full amount of the DPL is payable to the Town of Cary upon transfer, change or conveyance in ownership of the premises, or any part of the

premises; or the death of the owner(s) where this occurs in the first year after the loan is executed and by the relevant discounted amounts in each subsequent year.

All financial assistance provided through the Program, is evidenced by a note and secured by a mortgage filed with the Wake County Registry of Deeds.

## **Additional Program Requirements**

**Eligible properties:** Funds are available to rehabilitate owner occupied 1-4 family residential structures. Nonprofit housing development organizations are eligible to apply for funds to rehabilitate 1-4 unit structures, group residences or Single Room Occupancy units that are occupied by income eligible tenants.

**Property condition:** Residential structures may be assisted under the Program if one or more of the following conditions exist: A health/safety/building code violation(s); immediate emergency assistance is required, as determined by Program staff and/or an agent of the Town Health Department and/or Inspectional Services Department; a member in the household is disabled requiring accessibility improvements; it has been determined that hazard abatement measures to remove mold, asbestos or lead paint are required; or any of the conditions identified under Eligible Work.

**Taxes, water/sewer payments:** To be eligible to participate in the Program, the property's real estate taxes and water/sewer payments must be current.

**Property status:** All mortgages or mortgage notes secured by the property must be in good standing. The property must not have any municipal, state or federal tax liens. Applicants are required to inform Program staff if existing mortgages or mortgage notes secured by the property are not in good standing (e.g. in arrears, default or foreclosure). The Program will not provide assistance to applicants who have not resolved issues pertaining to the above. Applicants who are currently in bankruptcy or foreclosure proceedings are not eligible to apply to the Program.

**Property and Flood insurance:** All applicants must provide documentary evidence of current building insurance cover. In addition If Program staff determines through the environmental review process that a property is located within the 100 year floodplain, the applicant will be required to submit evidence of flood insurance coverage to participate in the program.

**Ownership:** For applicants seeking status as owner occupants, ownership of the property must be in the name(s) of people who reside at the property. The title to the property must clearly establish that the occupants are the owners of the property. Applicants must be able to clearly demonstrate who owns or has beneficial interest in the property and will be required to provide deeds or trust documents, as applicable, to Program staff. If an applicant holds only a life estate in the property, Program staff will require consent of the holder of the remainder interest.

**Household size:** Household size will be determined as part of the income eligibility process. In the event that there is a change in household size after a determination of income eligibility is made, Program staff may review the eligibility of the project in light of the change. For the purposes of determining household size and income eligibility, a pregnant woman is considered *two persons*.

**Start of work:** Work assisted under the Program may only begin after an owner has signed loan closing documents, which include a mortgage and promissory note with Program staff and a contract has been executed with the project consultant acting for the Town. Owners *will not normally* be reimbursed for work undertaken prior to approval and authorization under the Program.

**Town employees and officials:** Program staff, and any other Town employees or officials, who may have authority with respect to the administration of the Program, are not eligible to receive Program assistance.

**Project schedule (non-emergency cases only):** In general, unless there are Extenuating/unforeseen circumstances, the total amount of time for most projects to go from application to final completion should take no more than 180 days (six months).

**Providing false information:** If an applicant falsifies information or provides misleading information in an application, the applicant will be permanently disqualified from participating in the Program and will be required to repay any Program assistance already expended.

### **Emergency Assistance protocol:**

Program staff and/or the Town Minimum Housing Officer and/or the inspections & Permits or Fire Department will inspect any emergency conditions as well as check for other potentially hazardous conditions that might exist in the structure or on the property. Program staff and/or an agent of the Town Health Department and/or Inspectional Services Department will confirm the existence of any emergency conditions to the Housing Program Director who is responsible for approving work on an emergency basis subject to the following conditions:

1. In order to be eligible to receive emergency assistance, an owner must provide Program staff with documentation verifying income eligibility.
2. All emergencies will be handled as expeditiously as possible. Program staff are authorized to begin work (developing a scope of work and contacting contractors) prior to receiving documentation verifying income eligibility. However, no funds will be committed to the project without sufficient back-up documentation and a preliminary environmental review.

### **Disputes & Grievance procedure**

1. Any dispute between homeowner and contractor regarding the quality of work performed will initially be handled on-site by the Town of Cary staff, which may include assistance by a Building Inspector, Plumbing Inspector, and Electrical Inspector.
  2. If there is no resolution on-site the homeowner will be asked to submit an appeal in writing to the Minimum Housing Officer (MHO). The MHO will meet with the project consultant, homeowner and contractor, review the issue and make a determination.
  3. If the homeowner remains unsatisfied Final Appeal will be made to the Director of Planning, who will review the matter and issue a final decision in writing.
-

## **Project Work: Process Summary**

After the owner is determined eligible for Program assistance, Program staff will schedule a meeting to conduct a preliminary inspection and discuss work items the owner may want to include in the project. Depending on the age of the building and the nature of the work to be done, an inspection by a certified lead inspector is required. If the property is built prior to 1978 a risk assessment by a certified lead inspector is required.

Program staff will prepare work specifications and a cost estimate of eligible rehabilitation items for the owner's review.

Program staff will meet with the owner to make necessary changes to the specifications and will obtain the owner's approval of the work write-up.

Bids will be obtained from contractors through a competitive bidding process. The Town reserves the right to reject any and all bids or estimates of contractors and to waive any irregularities or items if it is in its best interest to do so

Program staff will review all bids received with property owners. The Town will base its funding on the low bid amount, provided that it is a responsible bid. Owners may select any bidder provided that they pay the difference between the low bid and the selected bid.

The owner must confirm the contractor within 10 days of the bid opening.

After a title search has been performed and existing encumbrances identified, Program staff will prepare closing documents (mortgage note, mortgage and Program funding agreement, as applicable) between the owner and the Town, and the contract between the owner and the selected contractor. Documents are subject to the review and approval of the Town Law Department. Note: rehabilitation funds will not be provided if there is an existing reverse mortgage.

If there are no deficiencies in the work and all Town-required permits and compliance certificates and any state mandated inspections have been signed by the appropriate Town Inspector(s), Program staff will process a final payment.

If any deficiencies are found during the final inspection, they will be communicated to the contractor through a punch list signed by the owner. The punch list will be prepared by Program staff. Once all punch list items are satisfactorily completed, Program staff and the property owner will approve the final payment.

## **Housing Rehabilitation Assistance Program - Project Schedule:**

### **30-60 days: Application review and Program approval**

Program staff reviews application and back-up documentation to verify eligibility.

Program staff requests additional information for a complete application, if necessary.

(If an applicant does not submit the requested information within 30 days, the review process may be terminated and the application will be returned to the applicant.)

Program staff will send a notification letter to the applicant stating the applicant is eligible to receive assistance; or notify the applicant that the household is ineligible.

### **21 days: Work write-up**

Program consultant completes a scope of work (work write-up) and a cost estimate.

### **30-60 days: Bidding project work and closing**

Consultant & Applicant approve the scope of work and seek competitive bids.

Program staff and consultant review the bids and unless there are extenuating circumstances, the contractor submitting the lowest bid is awarded the job.

Program staff prepares closing documents and schedules a closing. As applicable, a mortgage is recorded at the Wake County Registry of Deeds.

### **90-120 days: Project work**

Contractor normally has a maximum of 3 months, from receipt of a Notice to Proceed, to complete project work. A contractor may request a waiver to extend the construction period in cases of unforeseen repairs, inclement weather and/or material shortages.

All applicants must agree to adhere to the project schedule outlined above. If an applicant fails to meet time critical deadlines, Program staff may, with sufficient notice, discontinue the project. Without a waiver for extenuating circumstances, the applicant will not be allowed to reapply for Program assistance for a 12-month period and may be required to repay any Program assistance already expended.

**Periodic Inspections:** Periodic inspections will be conducted by Program staff during construction. As part of the above process, all contractors' invoices will be checked against the actual work done before any payments are made. Program staff will sign a form approving payment to the contractor prior to the payment being processed. The owner's signature on payments will serve as approval of the completed work. If applicable, Program funds are disbursed only after all private funds are released for payment to contractors. (Program staff will need evidence that private funds have been disbursed.) Private funds are released in accordance with the above procedures.

**Final Inspection:** At the completion of the job, a final inspection will be performed by the MHO, Program staff, and the General contractor together with the property owner.

---

## Detailed Rehabilitation Project Process & Procedure

**Contractor selection:** Once the initial loan documents have been completed, the process of securing project estimates from qualified contractors will begin. Town of Cary Staff and consultants will be responsible for contractor selection. The Program's staff will utilize best practices for drawing up the contractor list and selecting qualified construction firms. The Town shall require that every attempt be made to ensure that women and minority contractors have an opportunity to submit estimates for the work Construction Contract: Once a contractor has been selected, the Construction Contract Closing meeting may take place. The loan agreement and contract will allow for a 3-day Right of Rescission and the applicant will complete a Statement of Non-Rescission has been when the period has expired.

### Contractor Requirements

The minimum requirements for contractors to participate in the Program include:

A North Carolina General Contractor's license or trade license.

Registration as a North Carolina General Contractor, as applicable. Workman's compensation insurance at statutorily required limits, as applicable.

Property and liability insurance: Contractors shall furnish the Town with a Certificate of Insurance including general liability and workers' compensation and employees' liability insurance.

Demonstrated experience in the appropriate trade(s).

Each contractor must fill out an application form listing references, experience and licenses and submit a certificate of insurance prior to receiving a contract award. References will be checked by the Program consultant.

Contractors must take out all required permits prior to initiation of construction. The cost of the permits is to be included in the bid price.

If a participating contractor's performance or quality of work is unsatisfactory in the opinion of Program staff, the contractor will be issued a written notice describing specific problems with the contractor's work. This notice shall serve as a warning. If the problems, as outlined in this notice, are not addressed, then, based upon a recommendation from Program staff to the Housing Program Manager, the contractor will be barred from working in the Program.

### Labor, Construction and Procurement Policies:

Labor and construction must conform to the relevant specifications and provisions of the Federal Labor and Construction Standards an Applicable Town and State statutes and requirements. This ensures compliance with the Copeland Anti-kickback Act, the Contract Work Hours and Safety Standards Act, the Fair Labor Standards Act, Minimum Wage Standards, Discrimination and Affirmative Action, and Federal and State procurement standards.

**Contractors:** The construction contract is between the home owner and the contractor. The Program Manager and/or the appointed staff person acts as technical assistant and advisor for the property owner in dealing with the contractor during the rehab process. The Program inspector and /or Minimum Housing Officer will undertake project inspections to insure all work is done according to State building code and relevant program rehabilitation standards (see rehab standards guide) in addition to all required Building Code and zoning compliance inspections.

**Photo Record:** Before and after pictures will be taken on all rehab projects. On small projects it may only require an initial inspection and a final inspection upon completion of the work. Larger projects where the contractor is making payment draws throughout the project will require the inspector to do progress inspections to insure work being paid for is complete at the draw request.

**Lead-based Paint Testing:** Homes built prior to 1978 will be inspected for lead-based paint to comply with The Lead Based Paint Poisoning Prevention Act- and appropriate NC state guidance for lead based Hazard mitigation. In addition, applicants will be provided with the informational brochure, “The Lead Safe guide to Renovate Right” <http://epi.publichealth.nc.gov/lead/pdf/RenovateRight.pdf> to comply with the notification requirements of the Act. Contractors and remodelers must be certified in lead paint mitigation when working on homes built prior to 1978 and provide Program staff with the relevant certification.

**Contractor Verifications;-** Before contractor selection takes place, Program staff will confirm that the identified contractors are certified as General Contractors and have appropriate RRP or abatement certifications under NC state law. All Contractors must carry a minimum liability insurance of \$1,000,000 and provide a certificate of insurance to the program. All contractors must provide a copy of their license and proof of Worker’s Compensation Insurance when applicable. The program will make every effort to work with minority and women owned businesses.

**Project Report, Statement of Work & Estimated Costs:** It is required that the property have a minimum of one building code or MHO deficiency to be eligible for rehab. An MHO report and a preliminary project report will be prepared by the Rehabilitation consultant. A summary listing of the deficiencies, the repair and modification/improvements requested by owner will be included in report. After MHO, Identified hazards and building Code deficiencies and repairs are corrected, additional elective or qualifying “cosmetic” improvements may be done but may not exceed 20% of the loan. Public sidewalks, driveways, roads, streets, and out buildings are not eligible. A 10% allowance is added as a contingency to allow for coverage of unidentified repairs. The initial loan amount is then determined by adding the estimated cost with the contingency plus any applicable loan fees. This amount is assumed to be the amount to be financed until construction and loan costs are finalized.)

**Rehabilitation Contract:** Prior to Work Start The contractor, homeowner and the Program staff person executes the Rehabilitation Contract that outlines the responsibilities of each of the parties to the contract. All parties must sign the Agreement. Attached to the Rehabilitation Contract will be the “Statement of Work” document and the “contractor’s written scope of work”. The Rehabilitation Contract will clarify such details as work to be done, start date, completion date, verification of liability and workers compensation insurance, liquidated damages, progress payments, final payments, warranties, and building permits. All work must be performed in accordance with Local ordinances and State building codes as referenced in the contract.

**Progress Payments:** Progress payments may be made in accordance with the agreements made in the contract. To initiate a progress payment, the contractor must submit an invoice signed by the homeowner to the Program for approval. After approval is granted, and a periodic inspection made, the invoice is submitted to the accounting department for payment.

**Change orders:** Change order requests must be in writing and signed by the contractor(s) who signed the original contract. Change orders must be pre-approved by program staff & project consultants prior to additional work being undertaken.

---

**Promotion of low income/minority participation:** Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in the project areas. To meet the intent of HUD section 3 provisions the Town of Cary Rehabilitation Assistance program (RHAP) will do as follows;

- Have all contractors fill out the Section 3 Certification and keep a data base of contractors that meet the Section 3 guidelines.
- Publish in the local newspapers an open application period once a year for new contractors to apply to be on the programs recommended contractor list.
- Post a notice in area businesses of employment opportunities created from program funding.
- Provide information materials to contractors encouraging them to also provide employment opportunities when feasible to low and very low income residents in the project area.

## **Final Inspection, Lien Waiver & Payment to Contractor(s)**

**Final Inspection/Certificate of Completion:** At the completion of the contract work and following the issue of a certificate of compliance by the Inspections and Permits department where applicable, the minimum housing Inspector will perform a final inspection of the premises. The contractor, homeowner and program consultant that oversaw the project should all be present at the final walk-thru. The home owner's signing of the Certificate of Completion verifies the home owner's acceptance of the work. In the event items are identified on a punch list, those items must be completed/repared before the Certificate of Completion and Final Inspection are signed off by all parties. When all work is completed to the satisfaction of all parties involved, and a certificate of compliance has been issued, then the Certificate of Completion is signed by all parties. The final inspection report should not be signed until all are satisfied that the work has been completed as required by contract.

**Request for Final Payment & Lien Waiver:** The contractor must submit his invoice with the home owner's signature. Once the final inspection has taken place, the Program staff person will prepare a Request for Final Payment and the accounts payable department will prepare the check. Before the check is released to the contractor, lien waivers must be signed and submitted by all subcontractors and contractors who worked on the project.

**Payment to Contractor(s):** The final check will be mailed or presented to the contractor within the agreed payment cycle as specified in their contract.

**Grievance Procedure:**

If an applicant or participant has a grievance concerning the Program (i.e., actions of the Programs staff, contractor staff, procedures of The Program, work progress, work quality, completion, etc.), the grievance must be submitted in writing no later than 30 days following completion and certification of the rehab and applicants must follow the procedure as referenced above. A copy of all written correspondence regarding the grievance will be kept in the participant's or applicant's file. Home owners waive all rights to an informal hearing if violence, and/or threatening, aggressive or menacing behavior towards program staff, contractors or anyone affiliated with Town of Cary **RHAP** Program takes place.

**Defective Materials, Workmanship and/or Equipment:**

All claims for defective workmanship, materials and/or equipment must be made by the homeowner during the warranty period as specified in the Rehabilitation Contract. Such claims should be made to the contractor directly. The Program requires at a minimum all contractors provide a 1 year warranty.

**Reverse Mortgages, Estate Planning, and Lien Subordinations:**

When considering subordinating its lien position, the Town will try to reasonably accommodate Program participants while protecting the Town's interest in the property. The Town will consider subordination on a case by case basis. Under no circumstances will a subordination be approved without sufficient equity in the property. An appraisal may be required to confirm equity.

A title search will be performed and existing encumbrances identified as part of the Program staff review and approval process. Program funds will not be awarded if there is an existing reverse mortgage on the property.

Due to changes in life circumstances, owners may need to consider estate planning, reverse mortgages and refinancing during the repayment period of the loan. To allow for subsequent investment in the property following participation in the Program the Town will consider awarding lien subordination where this is requested. To request subordination owners must provide evidence of current encumbrances against the property. Documentation may include a combination of the following: loan application or loan approval from the lender for the proposed loan detailing existing debt, property appraisal, title search, statement of assessed value from Wake County or property tax bill, or equivalent third party documentation detailing property value and all encumbrances. The Director of Planning is authorized to approve the subordination. Property owners requesting lien subordination should allow thirty (30) days from the submittal of documentation for the Town to process the request.

**Change of Circumstances:**

In the case of other changes in circumstances, Program participants are encouraged to contact Program staff to discuss possible impacts on outstanding Program obligations. The Director of Planning may consider modifying funding assistance terms on a case-by-case basis.

**Amendments and Revisions;**

Program Guidelines and forms may be revised from time to time as deemed necessary. Major revisions to the Program Guidelines will require the approval of the Town Manager, following the review and recommendation of the Planning Director.

---

## ATTACHMENT A: DEFINITIONS

*Annual income* means all amounts, monetary or not, which are used to calculate a household's income for a 12-month period. The Town uses the definition of annual income found at CFR 24 Part 5 Subpart F Sec. 5.609 (Annual income) in determining income-eligibility.

*Deferred payment loan (Loan) (DPL)* means a non interest bearing loan where a set percentage of the principle is forgiven each year over a specified term until the principal reduces to zero.

*Emergency* means a situation that presents an immediate threat to the integrity of the structure or the health and/or safety of the property's occupants as determined by Program staff and/or an agent of the Town Health Department or Inspectional Services Department.

*Gross annual household income* means the yearly income of an individual or household generated from all sources of income before deducting allowable expenses.

*Hazard abatement* means the removal or remediation of unsafe materials such as mold, asbestos and lead paint. The removal of underground oil storage tanks—particularly if they are leaking—is an example of hazard abatement.

*Household* means all the persons who occupy a housing unit. The occupants may be a single- family, one person living alone, two or more families living together, or any other group of related or unrelated persons who are permitted to share living arrangements in the identified property.

*Low- and moderate-income household* means a household whose annual income limits do not exceed 80 percent of the area median income for the Raleigh/Cary MSA, adjusted for family size.

*Mortgage* means a legal document by which the owner (i.e., the buyer) grants to the lender an interest in real estate to secure the repayment of a debt, evidenced by a mortgage note. When the debt is repaid, a mortgage discharge is recorded with the registry of deeds in the county where the mortgage was recorded.

*Mortgage Note* means the written promise to repay a mortgage loan plus interest. A mortgage note states the principal amount due, the rate of interest, and the terms for repayment of the funds advanced. The borrower signing the note, and any cosigners, are each personally liable for repayment of the total debt.

*Owner/ownership* means the person or persons holding "title" to the property as evidenced by a deed or trust document.

*Principal benefit* means Town of Cary or federal CDBG funds must be used to assist the applicant household.

*Principal residence* means that the structure must be used as the primary home for the resident household.

*Program assistance* means the Town of Cary General fund appropriations and/or federal Community Development Block Grant (CDBG) funds used to pay for project-related costs.

*Registry of Deeds* means the Wake County Registry of Deeds.

*Structure, property (residential unit, house)* means any building which is habitable for residential use.

## Attachment B: Income Limits

Number in Household	HUD Income Limits - Moderate Income 2016/2017 (80% of area median income – Raleigh/Cary MSA)
1	\$42,950
2	\$49,050
3	\$55,200
4	\$61,300
5	\$66,250
6	\$71,150
7	\$76,050
8	\$80,950

Effective 2016

## Attachment C: Determining Income-Eligibility

In order to be eligible for Program assistance, beneficiaries must meet income limits established by HUD (See Attachment B: Income Limits). Under this Program, annual income is defined in 24 CFR 5.609 which is used by a variety of federally-assisted programs. The Part 5 definition of annual income is the gross amount of income of all adult household members (over 18) that is anticipated to be received during the coming 12-month period. There is an asset limit of \$200,000 (this does not include the applicants primary residence). The three principal steps in the income verification process for the Program include the following:

1. Document applicant's source(s) of income. Sources of income may include: employment/unemployment, social security, alimony, pension, monthly rental payments, child support, etc. (See *Sources of income used to calculate household income* below.) Income eligibility will be confirmed by reviewing the applicant(s) prior year submitted tax return.
2. Calculate the applicant's projected income using the source documentation submitted in step 1. This calculation includes all sources of income including assets (see below) and any regular financial contributions and gifts from persons not living in the household.
3. Compare the applicant's household projected income with HUD's income limits. Applicants whose income does not exceed the 80% limit, based on household size, are considered income-eligible for Program assistance.

### Calculating annual income: Inclusions and exclusions

Sources of income 24 CFR 5.609 (b)	Sources of income that are included in calculating household income
<b>1. Income from wages, salaries, tips, etc.</b>	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services. Overtime earnings must be based upon the average of the year to date and projected over the next 12 months.
<b>2. Business income</b>	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income
<b>3. Interest &amp; dividend income</b>	Interest, dividends, and other net income of any kind from real or personal property. If assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a % of the value of such assets based on the current passbook savings rate, as determined by HUD.
<b>4. Retirement and insurance income</b>	The full amount of periodic amounts received from SS, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount.
<b>5. Unemployment and disability income</b>	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay

**LOAN AGREEMENT WITH TOWN OF CARY**

**NORTH CAROLINA**

**THIS DEFERRED LOAN AGREEMENT** (hereinafter, "Agreement") entered into as of this \_\_\_\_, day of \_\_\_\_\_, 20\_\_, by and between the **TOWN OF CARY**, a municipal corporation existing under the laws of the State of North Carolina (hereinafter, "**Town**") and \_\_\_\_\_, ("hereinafter, "**Borrower**") an owner of a single family residential structure located within the boundaries of the **Town of Cary** corporate limits more specifically known as \_\_\_\_\_. (Address of Property)

**RECITALS**

**WHEREAS**, the Town of Cary desires to improve the physical appearance and living suitability of the residential structures within the boundaries of the Town, and;

**WHEREAS**, the Town has budgeted a limited amount of Federal Community Development Block Grant funds and/or Town of Cary General Fund Appropriations for the purpose of making repairs and/or improvements to the residential structures within the Town in accordance with the Town Council approved Housing Rehabilitation Program as of May 17, 2005; and

**WHEREAS**, the Borrower, an owner or life estate holder of a single family residential structure within the Town (hereinafter, "**Property**") as further described below, desires to make repairs and/or improvements to the structure; and

**WHEREAS**, the Borrower desires financial assistance, in the form of a deferred loan to make repairs and/or improvements to the Property, and;

**WHEREAS**, Borrower will receive a deferred loan from the Town, based upon the terms set forth herein, (hereinafter "**Deferred Loan**" or "**Loan**"), the proceeds of which will be used solely for the repairs and/or improvements to the property. The Loan will be evidenced by a Promissory Note (hereinafter "**Note**") for a sum certain and such amount will be further secured by personal guaranty of the Note; and

**WHEREAS**, Town has agreed to lend Borrower \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_.\_\_) to assist Borrower with the costs of making Town approved repairs and/or improvements to the residence Property; and

**WHEREAS**, in order to set forth the terms of the loan and its repayment, Borrower and Town are entering into this Agreement;

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein contained, the parties agree to the following terms and conditions:

## **ARTICLE I DEFINITIONS**

For purposes of this Agreement, in addition to the terms defined in the Recitals, each of the following terms shall have the following meanings:

“**TOWN**” shall mean that geographical area of the Town Corporate limits as designated and adopted by the Cary Town Council.

“**Property**” shall mean the single family residential structure, owned and occupied by Borrower, located in the Town.

“**Project**” shall mean any and all construction, materials, workmanship, design and any other matter associated with the repairs and/or improvements of the Property.

“**Borrower**” shall mean the owner of record of the property who also resides in the property.

“**Deferred Loan**” or “**Loan**” means a loan whose principal and interest is not due during the expressed term of the deferred loan and, given certain events, whose principle will be forgiven at the end of the expressed loan term.

“**Loan Amount**” means the total funds as designated in the Contractor work write up and cost estimation which Borrower is investing in eligible construction costs for repairs and/or improvements to the property.

“**Eligible Construction Costs**” means the costs and expenses incurred in connection with constructing, renovating, or repairing the Property, including without limitation, the structure and certain other eligible improvements to the property as described in the Town of Cary Housing Rehabilitation Program description. To be eligible, a Borrower must meet the maximum income limits as provided by the US Housing and Urban Development Department (HUD) and additional criteria as set out in the Town of Cary Housing Rehabilitation Program Eligibility Guidance.

“**Completion Date**” means the date of completion of the proposed and approved Housing Rehabilitation Project. Such date shall not be greater than six (6) months from the date of Town’s Notice to Proceed to the contractor.

“**Note**” shall mean the Promissory Note which sets forth the details of the lending and repayment of the Deferred Loan for the costs associated with the repairs and/or improvements to the Property.

“**Personal Guaranty**” shall refer to the individual or individuals that sign the Promissory Note in accordance with this Agreement, who are financially and individually responsible for repayment of the Deferred Loan should it become due and payable to the Town. Such individual or individuals shall be jointly and severally liable.

**ARTICLE II  
DEFERRED LOAN (“LOAN”)**

The Deferred Loan shall be made upon the following terms:

1. **Amount.** Subject to the terms and conditions provided in this Agreement, Town agrees to lend to Borrower the amount of \$\_\_\_\_\_ to pay for the costs associated with Eligible Construction Costs for the repairs and/or improvements to the Property. The Loan shall be evidenced by the Note, a copy of which is attached hereto, and shall be secured by a personal guaranty in the same amount. The entire balance of the Loan shall be disbursed on or before thirty (30) days from Town’s acceptance and certification of the completed project.
2. **Purpose of Deferred Loan.** The funds received by Borrower, through this Agreement, shall provide assistance to the Borrower for payment of approved costs associated with the Project. By signing this Agreement, Borrower understands and agrees that all funds received through this Loan shall go toward the costs of repairs and/or improvements to the Property. In no event shall Borrower use funds received from the Loan in any manner which would be inconsistent with the terms of this Agreement. Borrower shall present evidence to Town of actual expenses incurred and the amount of Loan shall be based upon such evidence. Once repairs/improvements have been completed Borrower shall allow Town to inspect the Property. Upon completion of the inspection, the Town’s approval of the completed project, Borrower’s approval of the completed project, and Borrower’s submission of sufficient evidence of costs incurred, the appropriate steps shall be taken to release the Loan amount to the designated contractor, subcontractors, and vendors for disbursement.
3. **Borrower’s Responsibility to Abide by Laws and Obtain Permits.** Borrower acknowledges that the funds received through this Agreement include federal funds. All work relating to the Property shall be conducted in accordance with all applicable federal, state and town regulations, including without limitation, all laws pertaining to payment and wages. Borrower shall at all times comply with applicable building laws and/or codes. Borrower’s contractor shall obtain any permits necessary for the Project. Borrower’s default shall cause Borrower to forfeit any rights set forth herein. Furthermore, in the event of Borrower’s default, any Loan monies received by Borrower in accordance with this Agreement shall be immediately repaid, in full, to the Town of Cary.
4. **Owner Rights to Make Improvements.** Borrower represents to Town that Borrower is the owner of the Property. Borrower represents and warrants that Borrower maintains legal and proper title, rights and/or permission to make repairs/improvements to the Property. Borrower shall at all times hold Town harmless from any and all actions or claims of third parties, including without limitation:
  - a. Any parties that allege rights of title, possession or control of the Property;
  - b. Any parties that allege a claim for payment for services or goods provided to the Property; and
  - c. Any parties that claim damages of any sort, relating to the repairs and/or improvements to the Property, past, present or future.
5. **Parties Not Joint Venturers.** Borrower and Town agree that, as between them, Borrower, and not Town, has the sole responsibility for the control, management and development of the Property, and that Town’s rights with respect to the Property are only those set forth in this Agreement and the other Loan Documents. The relationship created between Town and Borrower by this Agreement and the other Loan Documents is one of creditor and debtor, and Town is not and shall not be treated as a partner or co-venturer with Borrower. Any losses incurred by Borrower in connection with its ownership or development of the Property shall be borne solely by Borrower.

6. **Borrower's Representations of Information Provided.** Borrower represents and warrants that any and all information provided to Town, including without limitation, information in the Application Form, is truthful, accurate and complete.

### **ARTICLE III**

#### **LOAN REPAYMENT**

2. **TERMS OF DEFERRED LOAN.** The terms of this Loan shall be for a period not to exceed ten (10) years from the date of Town's approval of the completed Project as evidenced by a signed copy of the Town's Certificate of Completion.
3. **FORGIVENESS OF DEBT.** On or after ten (10) years from the date of Town's approval and Certificate of Completion of the repairs and/or improvements, the debt associated with this Loan and the related Promissory Note, shall be forgiven if the repairs and/or improvements have remained in their original condition as approved by the Town and if the Borrower has not sold or transferred the property to another entity.
3. **CHANGES OR REMOVAL OF IMPROVEMENTS & REPAYMENT.** In the event the completed repairs and/or improvements are removed or substantially modified by either the borrower or any party after the execution of this Agreement and on or before ten (10) years from the date of Town's approval of the completed Project, Borrower shall immediately repay in full the remaining monthly prorated amount of the loan to the Town. The amount of the prorated amount due shall be calculated by prorating the total amount due over 120 months (ten years) from the date of Town's approval of the completed Project and calculating the number of months remaining in the ten (10) year period. (For example: on Property that has improvements at a cost to Borrower of \$50,000.00, Borrower would have received \$50,000.00 as a Deferred Loan. Over a ten (10) year period (120 months) the monthly prorated amount would be \$416.67 per month. If the Town's approval is given October 1, 2016, and the work is removed or modified on October 1, 2017, Borrower would be responsible for the remaining payment of 108 months @ \$416.67 or \$45,000.36. However, if Borrower abides by all requirements set forth herein, repayment of loan shall be forgiven by Town after the ten (10) year period expires).

In the event the property is sold or transferred before the ten year period expires, the entire and non-prorated amount of payment indicated on the Promissory Note shall be due and payable to the Town immediately following Borrower's sale or transfer of the property.

4. **DEADLINE FOR COMPLETION OF REPAIRS/IMPROVEMENTS.** Borrower agrees to allow to have completed all planned and approved repairs and/or improvements on or before six (6) months from the date which Town has approved the Borrower's Rehabilitation Contract execution. Borrower's failure to allow completion of the work in accordance with the specified time shall place Borrower in default of this Agreement and shall cause Borrower to forfeit any rights set forth herein. Furthermore, any Loan monies received by Borrower in accordance with this Agreement shall be immediately repaid, in full, to Town in the event of Borrower's default. Town may extend Borrower's time for completion at Town's sole discretion.
5. **INCORPORATION OF OTHER DOCUMENTS.** The Housing Rehabilitation Program information which contains descriptive information about the program and the loan, the Promissory Note and Personal Guaranty, the Application Form with the Borrower's information and written permission from third parties as described in Article II Paragraph 4 above, are each incorporated as if fully set forth herein.

## ARTICLE IV

### GENERAL CONDITIONS

1. **PRIVATE AGREEMENT.** This Agreement is made and entered into for the sole protection and benefit of Town and Borrower, their successors and assigns, and no other person or persons shall have any rights under this Agreement.
2. **SUCCESSORS AND ASSIGNS.** The terms of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that Borrower shall not assign this Agreement or any of its rights, interests, duties or obligations hereunder without the prior written consent of Town and that any such assignment (whether voluntary or by operation of law) without Town's consent shall be void.
3. **CONSTRUCTION.** Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine.
4. **GOVERNING LAW.** This Agreement has been entered into under, and shall be construed and interpreted in accordance with, the laws of the State of North Carolina.
5. **SEVERABILITY.** Invalidation of any one or more of the provisions of this Agreement shall not affect any of the other provisions thereof, which shall remain in full force and effect.
6. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
7. **CAPTIONS.** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision hereof.
8. **NOTICES.** All notices required to be given under this Agreement or any other Loan Document shall be in writing and executed in the same manner as this Agreement.
9. **MODIFICATION.** A modification or waiver of any of the provisions of this agreement shall be effective only if made in writing and executed with the same formality as this agreement.
10. **ENTIRE AGREEMENT.** This agreement contains the entire understanding of the parties, and there are no representations, warranties, covenants, or undertakings other than those expressly set forth or incorporated herein.

**IN WITNESS WHEREOF**, Borrower and Town have executed this Loan Agreement as of the day and year first above written.

**BORROWER:**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**TOWN OF CARY:**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

September, 2016

**ATTACHMENT E - PROMISSORY NOTE**

**PROMISSORY NOTE**

**WAKE COUNTY**

**CARY, NORTH CAROLINA**

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

\$ \_\_\_\_\_

FOR VALUE RECEIVED, \_\_\_\_\_, a North Carolina resident having his/her place of residence in Cary, North Carolina ("**Borrower**"), promises to pay to the order of the TOWN OF CARY, a North Carolina municipal corporation (hereinafter, together with all subsequent holders of this Note, the "**Payee**"), on or before the Maturity Date (as defined below), the principal sum of \_\_\_\_\_, or so much thereof as shall have been disbursed from time to time and remains unpaid, without interest except to the extent provided in Section 6 below, and payable in the manner stated in this Note and the Deferred Loan Agreement (the "**Loan**"). All payments owed hereunder shall be payable at the Payee's office located at Town of Cary, 316 N. Academy Street, Cary, North Carolina 27512, or such other place as the holder of this Note may designate from time to time, in immediately available lawful currency of the United States.

Repayment Terms. This Note shall be due and payable on demand under the following condition: All remaining principal and, if applicable, accrued interest, shall be due and payable in full to the Payee upon the sale or transferring of the property deed described in the Deferred Loan document on or before a period of ten (10) consecutive years commencing on the date of execution of this instrument. Borrower may prepay this Note, in whole or in part, at any time without penalty. Upon the expiration of the five year period, such loan and this note shall be forgiven to the Borrower and all debts, notes, and conditions of the Deferred Loan Agreement shall become vacated and void.

Deferred Loan Agreement. This Note is the promissory note referred to in the Deferred Loan Agreement of even date herewith between Borrower and the Payee (the "**Deferred Loan Agreement**"). To secure the prompt payment, performance and observance in full of the Loan advances evidenced by this Note and all other obligations of Borrower under the Deferred Loan Agreement, the Payee and Borrower have entered into the Deferred Loan Agreement and each are entitled to the benefits thereof. All terms not defined herein shall have the meanings given to them in the Deferred Loan Agreement.

Default.

In the event that there shall occur a default or an event of default under the Deferred Loan Documents, then, or at any time thereafter, the entire principal balance outstanding hereunder shall, at the Payee's option and without notice to Borrower, become immediately due and payable and the Payee shall be entitled to exercise any rights or remedies provided to it under the Deferred Loan Documents and by law. The Payee may exercise this option to accelerate at any time during any uncured default, regardless of any prior forbearance, and the acceptance of one or more installments from any person or entity thereafter shall not constitute a waiver of the Payee's option to accelerate;

In the event that there shall occur a default or an event of default under the Deferred Loan Documents, then the Payee, at its option and without accelerating this Note, may accrue interest at an annual rate equal to eight percent (8%) per annum on the entire principal balance then outstanding hereunder from the date of such default until the default is cured.

Costs and Expenses. Borrower agrees to pay immediately upon the Payee's demand therefore all reasonable costs and expenses incurred at any time by the Payee, including without limitation, reasonable attorneys' fees, in connection with collecting the indebtedness due hereunder, enforcing any of its rights and remedies or in protecting the validity and priority of the Deferred Loan Agreement. The amount of "reasonable attorneys' fees" shall be

determined on the basis of actual time expended and services actually performed by such attorneys at their customary hourly billing rates but shall in no event exceed the amount established by the statutory presumption contained in N.C.G.S. 6-21.2.

Non-recourse Loan. Neither Borrower, any partner, owner, member or affiliate of Borrower or any third party shall have any personal liability for any amounts owing under this Note, and in the event of any default or event of default under this Note or any other Deferred Loan Document, the Payee shall look solely to the property and shall not be entitled to seek any deficiency from Borrower, or any partner, owner, member or affiliate of Borrower, or any third person.

Waiver. Borrower hereby waives presentment, demand, protest, notice of protest, nonpayment, dishonor and acceleration of maturity and agrees that the time for payment of this Note may not be extended, and that any collateral securing the payment of this Note may be released, all without notice to Borrower and without affecting, in any manner, its liability for payment of the indebtedness evidenced herein.

Severability. Whenever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable North Carolina and Federal law, but if any provision of this Note shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition without invalidating the remainder of such provision of the remaining provisions of this Note.

Headings. The headings of the sections and subdivisions of this Note are for convenience of reference only, are not to be considered a part hereof; and shall not limit or otherwise affect any terms herein.

Successors and Assigns. This Note shall apply to and bind Borrower's heirs, personal representatives, successors and permitted assigns. All references in this Note to Payee shall include the holder hereof and this Note shall inure to the benefit of any holder, its successors and assigns.

IN WITNESS WHEREOF, Borrower has caused this instrument to be duly executed in his/her name under seal all by authority duly given as of the day and year first above written.

\_\_\_\_\_ a Cary resident

By: \_\_\_\_\_

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

WAKE COUNTY  
STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I \_\_\_\_\_, a Notary Public,

Certify that \_\_\_\_\_ personally came before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial stamp or seal this \_\_\_\_ day of \_\_\_\_\_, 20 .

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

