

**CITY OF SAN JOSE
HOME AGREEMENT**

This Agreement is made and entered into this _____ day of _____, 20____, by and between the **CITY OF SAN JOSE**, a municipal corporation of the State of California, (the "City"), and _____, **[list all persons on title]** (the "Borrower").

RECITALS

A. The HOME INVESTMENT PARTNERSHIP ("HOME") PROGRAM implemented by the United States Department of Housing and Urban Development ("HUD") pursuant Title 24 of the Code of Federal Regulations Part 92 ("24 CFR 92"), and the Cranston Gonzalez Affordable Housing Act makes funds ("HOME Funds") available that a participating jurisdiction may use to assist low-income families to achieve homeownership. The City is a participating jurisdiction and provides certain HOME Funds to assist eligible low-income families to achieve homeownership in the City of San Jose.

B. When the City loans HOME funds to assist a low-income family ("family" includes single persons pursuant to 24 CFR 5.403) to achieve homeownership, pursuant to 24 CFR 92.501 and 92.504(b) it must enter into an agreement with the Borrower that ensures that the HOME requirements are met. The City has agreed to loan HOME funds to the Borrower subject to eligibility and the execution by the Borrower of this Agreement and other documents.

C. The Borrower will enter into a promissory note of even date herewith ("Note"), a Deed of Trust of even date herewith ("Deed of Trust") to be recorded in the Official Records of the Santa Clara County Recorder and an Errors and Omissions/Compliance Agreement (collectively, "City Documents"). The Note evidences a loan of HOME funds for the purchase of a home located at _____ and more particularly described in Exhibit A to the Deed of Trust (the "Property").

CITY AND BORROWER HEREBY AGREE AS FOLLOWS:

SECTION 1. PERIOD OF AFFORDABILITY AND TERM OF AGREEMENT:

The period of affordability for the Loan is fifteen (15) years beginning on the date of recordation of the Deed of Trust (the "Recording Date"). This Agreement shall be effective from the date first set forth above until the end of the period of affordability, unless the parties hereto agree in writing to a longer term, and as may be allowed by HOME regulations.

The Recording Date shall occur within six (6) months from the date of this Agreement as set forth in 24 CFR 92.2(2)(ii) (B) – Commitment. In the event the Recording Date does not occur within six (6) months from the date of this Agreement, then this Agreement shall be amended and City shall redetermine Borrower's eligibility hereunder.

SECTION 2. HOME PROVISIONS INCLUDING 24 CFR 92.251 and 92.254:

- A. Use of HOME Funds.** City approved a loan of HOME funds in the total amount of _____ **DOLLARS (\$_____)** (the "Loan") which is to be used toward eligible project costs described under 24 CFR 92.206 associated with the purchase of the Property, including downpayment assistance.
- B. Investment.** Up to the maximum amount allowed under 24 CFR 92.250 may be loaned to an eligible borrower under the Program.
- C. Maximum Property Value.** The purchase price of the Property shall not exceed 95% of the median purchase price for the area, unless otherwise approved by HUD.
- D. Property Standards.** The Property shall be maintained in compliance with applicable State and local housing code requirements for the duration of the Loan. If the Property is new construction, it shall also comply with the Model Energy Code. The City retains the right to inspect the Property prior to approving the Loan.
- E. Eligibility.** The Borrower affirms that the Borrower's family is a low-income family (income not exceeding 80% of the area median income) and was/will be a low-income family at the signing of the purchase agreement, based on current maximum annual income guidelines issued by HUD. The City reserves the right to reexamine income eligibility if the purchase of the Property has not been completed within one month of City's initial determination of eligibility.
- F. Principal Residence.** Borrower shall occupy the Property as a principal residence during the period of affordability.
- G. Long-term Affordability.** Pursuant to 24 CFR 92.254, the HOME-assisted unit must meet the affordability requirements for not less than the term of the period of affordability or any longer period stipulated in the City Documents.
- H. Recapture Provisions.** The recapture provisions described in the Note shall apply to the Loan, which provisions are consistent with 24 CFR 92.254.
- J. Other Federal Requirements.** The Property shall comply with all Federal laws and regulations described in 24 CFR 92.350-356, including specifically: (i) flood insurance if the Property is located in a FEMA-designated 100-year flood plain, (ii) inspection for lead based paint if the property was constructed prior to 1978 and (ii) relocation requirements for tenants residing in the Property prior to the Recording Date including any notice provisions.

SECTION 3. POLICY GUIDELINES:

Borrower shall comply with all applicable terms, conditions, requirements and guidelines of the City's Housing Department and HOME regulations issued by HUD.

SECTION 4. INDEMNIFICATION AND HOLD HARMLESS:

Borrower shall defend, indemnify and hold harmless City, its officers, employees and agents against any damages or liabilities arising from:

- A. Any non-compliance by Borrower with any applicable laws, ordinances, codes, regulations, and decrees;
- B. Any torts committed by Borrower in performing, or failing to perform, any of the obligations required by this Agreement;
- C. All suits, actions, claims, causes of action, costs, demands, judgments, and liens (collectively, "Claims") arising out of Borrower's performance under this Agreement, including, without limitation, Borrower's failure to comply with or carry out any of the provisions of this Agreement and any claims against the City to restore to the HOME Funds disbursed hereunder. This Section shall survive termination of this Agreement.

SECTION 5. INTEGRATED DOCUMENT:

This Agreement and the City Documents embody the entire agreement between City and Borrower of its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of the City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon the City.

SECTION 6. SEVERABILITY OF PROVISIONS:

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the terms and requirements of applicable law.

SECTION 7. NONCOMPLIANCE/ENFORCEMENT OF THE AGREEMENT:

City may use whatever legal means and remedies necessary and available to enforce this Agreement. Specifically, the affordability requirements in 24 CFR 92.254 shall enforced and failure to comply shall be a default of the City Documents enforceable by all remedies up to and including foreclosure.

IN WITNESS WHEREOF, the parties have executed this Agreement as of date first set forth above.

"City"

City of San Jose, a municipal corporation

By: _____

Name: _____

Title: _____

"Borrower"

By: _____

Name: _____

By: _____

Name: _____