

FREE RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 6103 & 27383

When Recorded Mail to:

City of Santa Ana
20 Civic Center Plaza, M-26
P.O. Box 1988
Santa Ana, California 92702
Attention: Housing Manager

HOMEBUYER DOWN PAYMENT ASSISTANCE LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is made as of _____,
2021~~18~~, by and between _____ ("Borrower") and
the City of Santa Ana, a charter city and municipal corporation duly organized and
existing under the Constitution and laws of the State of California - ("City").

R E C I T A L S

A. City is a recipient of Inclusionary Housing funds from the Housing
Opportunity Ordinance -pursuant to Sec. 41-1900.

B. Borrower has entered into an agreement (the "Purchase Agreement") to p
purchase residential property, located at _____,
Santa Ana, California, as more particularly described in the legal description, Exhibit A
attached hereto and incorporated herein (the "Property"). Pursuant to the Purchase
Agreement, the price to be paid for the Property is \$_____ (the
"Purchase Price").

C. The City wishes to encourage a greater degree of owner-occupancy of
residences in the neighborhoods of the City of Santa Ana. In order to promote this goal,
the City has established its "My First Home Santa Ana" Homebuyer Down Payment
Assistance Loan Program (the "Program"), under which the City will provide a subsidy
in the form of a trust deed loan in the maximum amount of \$12080,000.00 to an "Eligible
Person or Family" (as defined elsewhere in this Agreement) toward the purchase of a
residence within the City.

D. The Program is implemented in accordance with the Housing Opportunity
Ordinance, and will be modified whenever necessary to insure compliance with
regulations and continued Program feasibility.

E. The City agrees to loan to Borrower and Borrower agrees to borrow from ~~the the~~ City \$_____ (the "City Loan") pursuant to the Program, subject to the terms and conditions set forth herein. Borrower must contribute a minimum of three percent (3%) of the purchase price towards down payment. This minimum contribution cannot be from gift funds.

F. The Purchase Price for the Property is to be paid by Borrower by a combination of funds, including:

a. Borrower's down payment in the amount of \$_____

—A loan to be made by _____,

~~b.~~ secured by a first deed of trust, in the principal amount of \$_____ (the "First Mortgage Loan"); and;

~~b.~~ The City Loan, secured by a deed of trust, in the principal amount

~~c.~~ of \$_____.

G. Borrower has provided the City with written documentation from the lender making the First Mortgage Loan stating that the amount of the City Loan requested by Borrower is the minimum amount of additional financing necessary for Borrower to qualify for the First Mortgage Loan.

H. The Loan Agreement and all of its attachments shall be enforceable by City in accordance with the terms thereof. Each of the Loan Agreement, the Income And Owner-Occupancy Covenants and Resale Restrictions/Affordability Covenants, the City Promissory Note and the City Deed of Trust provide a means of enforcement by the City if Developer is in breach of its obligations hereunder and thereunder, including liens on the Property, use and deed restrictions and covenants running with the land [24 CFR 92.504 (c)(13)].

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

Definitions: Unless otherwise defined, the following capitalized terms shall be defined in this Agreement as follows:

"City Deed of Trust" means the deed of trust securing the City Loan, in the form attached to this Agreement as Exhibit B and incorporated herein by reference.

"City Loan" means the deferred loan of Inclusionary Housing funds to be made by the City to Borrower in the principal amount of \$_____ in accordance with this Agreement.

“City Promissory Note” means the promissory note in favor of the City, evidencing the City Loan, in the form attached to this Agreement as Exhibit C and incorporated herein by reference.

“Eligible Person or Family” means a person or family (1) with household annual income of less than 80% of the area median income for the City, adjusted for family size; (2) who is a “First-Time Homebuyer”, and (3) who is purchasing a single family residence for occupancy as his, her or their principal residence.

“Escrow Agent” means _____;

“Excess Refinancing Proceeds” means the amount of cash received by Borrower as the result of any refinancing of the First Mortgage Loan for a loan amount in excess of the then-current loan balance of the First Mortgage Loan;

“First Mortgage Loan” means the loan to Borrower from _____ in the amount of \$_____, or any loan obtained by Borrower to refinance the First Mortgage Loan.

“First-Time Homebuyer” means an individual or an individual and his or her spouse who have not owned a home during the three-year period before the purchase of the Property. The term includes displaced homemakers and single parents as defined in 24 CFR Part 92.2.

“Income And Owner-Occupancy Covenants and Resale Restrictions (the “Affordability Covenants”) means the document entitled “Income and Owner-Occupancy Covenants and Resale Restrictions”, in the form attached to this Agreement as Exhibit D and incorporated herein by reference.

“Property” means the real property described in the legal description attached to this Agreement as Exhibit “A” and incorporated herein by reference.

“Purchase Price” means the entire purchase price to be paid by Borrower for the Property.

“Returning Student” means prospective homebuyers that graduated from a high school located in Santa Ana and have a four (4) year college degree._____

“Sale” means any sale, transfer, assignment or conveyance of the Property, any portion thereof or interest therein, including, without limitation, any lease, exchange, or other disposition of any interest in the Property, whether voluntary or involuntary, except that any transfer by gift, devise or inheritance to an existing spouse surviving joint tenants or other co-owner, or a spouse as part of a dissolution proceeding or in connection with marriage, or by devise or inheritance to children, shall not be considered a Sale for the purposes of this Agreement.

“Term of Affordability”, shall be forty-five (45) years from close of escrow.

City Loan. The City agrees to lend to Borrower, and Borrower agrees to **1.** borrow from the City, the City Promissory Note Amount, at zero (0%) interest as provided in Section 2 of this Agreement, subject to the conditions and restrictions set forth in this Agreement, in the Promissory Note and in the City Deed of Trust. When all conditions to the close of escrow other than payment of the Purchase Price have been satisfied, the City shall deposit the Loan Amount with the Escrow Agent. The City shall direct the Escrow Agent to apply the proceeds of the City Loan on behalf of Borrower to the Purchase Price of the Property for the down payment. Borrower shall execute and deliver to the Escrow Agent the City Promissory Note, the City Deed of Trust and the Affordability Covenants.

2. Authorized Use of City Loan. The City Loan proceeds may only be used for the down payment associated with the purchase of the Property.

3. Conditions Precedent. Borrower must complete eight (8) hours of homeownership training offered by a counseling center approved by HUD, and open an impound account for property taxes and insurance costs. Borrower must have a positive credit history and must obtain a fixed rate loan (co-signors and variable rate loans are not allowed). Borrower will be required to provide payment of up to 3% of the purchase price toward the down payment. All properties built before 1978 must have a Visual Lead Based Paint Inspection and must pass the inspection before loan approval. Inspections will be made to ensure that there are not code related issues, including common areas in condominium complexes.

4. Interest Rate and Repayment /Acceleration Terms.

(a) **Interest Rate.** The City is making the City Loan to Borrower at zero percent (0%) interest.

(b) **Service Charge.** Borrower shall be required to pay any and all service charges associated with the City Loan.

(c) **Repayment/Acceleration.** The unpaid outstanding principal balance of the City Loan and any penalties thereon shall be all due and payable when any of the following events take place:

- i. at the end of the 45 year Term of Affordability;
- ii. when the Property is sold;
- iii. when the Property is not properly being used as the Borrower's principal residence;
- iv. The City discovers that Borrower knowingly or willfully made a

misstatement or misrepresentation pertaining to Borrower's status as an Eligible Person or Family;

- v. An uncured default in performance or breach by Borrower of any provision of this Agreement, the Promissory Note, the City Deed of Trust or the Affordability Covenants.

(d) Excess Refinancing Proceeds. In the event that the First Mortgage Loan is refinanced, any Excess Refinancing Proceeds shall be paid out in accordance with City policy.

(e) Returning Student Loan Forgiveness Incentive. Returning Students will be eligible for a loan forgiveness up to \$40,000. Under this loan forgiveness incentive, \$10,000 will be forgiven from the City Promissory Loan Amount every five (5) continuous years that the Returning Student remains in compliance with all terms and conditions of this Agreement and the Affordability Covenants. The maximum length of time for the Returning Student Loan Forgiveness Incentive shall be over a twenty (20) year period, up to a maximum of \$40,000 forgiven from the City Promissory Loan Amount. In the event that the entire City Promissory Loan Amount is forgiven, the Term of Affordability shall not be affected and shall remain enforceable for the complete timeframe defined herein.

5. Nondiscrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, sex, disability, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any part thereof, nor shall Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Property. The provisions of this section shall be set forth in the Agreement Containing Covenants recorded against the Property.

6. Income Requirement.

—Borrower acknowledges the City's intent that the Property remain
a. available to persons or families whose household annual income does not exceed 120% of the area median income for the City, adjusted for family at affordable housing cost for the longest feasible time, but in any event not less than Forty Five (45) years from the date of recording of the Affordability Covenants, provided that the Property remains habitable.

a.—Borrower represents and warrants to the City that the information
b. - relating to Borrower's household income that has been provided by Borrower to the City to verify Borrower's eligibility for the City Loan is true, correct and complete as of the date such information was provided to the City and as of the date of this Agreement. If any such information changes prior to the close of escrow for the purchase of the Property, Borrower shall promptly notify the City of such change. Borrower acknowledges that the City is relying upon the representations made by

Borrower with respect to Borrower's household income and that the City would not enter into this Agreement if Borrower's household annual income were in excess of 120% of the area median income for the City, adjusted for family size, as of the date of this Agreement. As of ~~April 1, 2021~~~~June 9, 2017~~ 120% of the area median income for the City of Santa Ana, adjusted for family size (subject to change approximately annually) was as follows:

<u>Family Size</u>	<u>Income</u>
1	\$ 89,650 73,900
2	\$ 102,450 84,500
3	\$ 115,250 95,050
4	\$ 128,050 95,600
5	\$ 138,300 14,050
6	\$ 148,550 2,500
7	\$ 158,800 30,950
8	\$ 169,050 39,400

7. First-Time Homebuyer. Borrower represents and warrants to the City that Borrower and each adult in Borrower's household is a First-Time Homebuyer as defined by this Agreement. Borrower acknowledges that the City is relying on Borrower's representation that Borrower and each adult in Borrower's household is a First-Time Homebuyer and that the City would not enter into this Agreement if Borrower and each adult in Borrower's household were not a First-Time Homebuyer.

8. Owner-Occupancy Requirement.

a. Borrower shall occupy the Property as his, her or their primary residence, and the Property shall be used as the principal residence of Borrower and Borrower's household and for no other purpose. The maximum occupancy of the Property shall not exceed two persons per bedroom plus one additional person.

b. The City shall have the right to monitor whether the Property is owner-occupied by requesting that Borrower provide the City, no more frequently than annually, with a written certification under penalty of perjury that the Property is owner-occupied, accompanied by supporting documentation reasonably satisfactory to the City.

c. In the event of a breach of this section, the City Loan shall become immediately due and payable.

d. The provisions of this section shall also be set forth in the Agreement Containing Covenants recorded against the Property.

9. **Maintenance of Property.** Borrower must maintain the interior and exterior of the improvements and the landscaping on the Property in a manner consistent with community standards which will uphold the value of the Property, in accordance, with this Agreement and the Santa Ana Municipal Code. The maintenance requirements are set forth in specific detail in the recorded Affordability Covenants.

10. **Defaults.** Failure or delay by either party to perform any term of provisions of this Agreement, the Promissory Note, the City Deed of Trust or the Agreement Containing Covenants which is to be performed by such party constitutes a default under this Agreement. The other party (the "Complaining Party") shall give written notice of default to the party in default, specifying in reasonable detail the matter constituting the default. The party in default shall have 15 days following receipt of notice to cure the default. Except as required to protect against further damages, the Complaining Party shall not institute proceedings against the party in default unless the matter is not cured within such 15 day period, or, if the default is of a nature requiring more than 15 days to cure, the party in default commences to cure the matter within such period and diligently pursues such cure to completion within a reasonable time, but in no event more than 45 days after notice of default. Failure to cure the default within the applicable cure period shall entitle the Complaining Party to terminate this Agreement and/or exercise any remedies available to such party, including, without limitation, acceleration of payment due on the City Loan.

11. **Loan Servicing.** The City may contract with a private lender to originate and service the City Loan, and any costs associated therewith shall be paid by the Borrower.

12. **Indemnification.** Borrower shall indemnify, defend and hold harmless the City, and its respective officers, agents, employees, legal counsel, representatives and volunteers, from and against any loss, liability, claim or judgment relating in any manner to the Property or this Agreement. Borrower shall remain fully obligated for the payment of taxes, liens and assessments relating to the Property. There shall be no reduction in taxes for Borrower, nor any transfer or responsibility to the City to make such payments, by virtue of the City Loan.

13. **Insurance.** Borrower shall maintain, during the term of the City Loan, an all-risk property insurance policy insuring the Property in an amount equal to the full replacement value of the structures on the Property. The policy shall name the City as loss payee and shall contain a statement of obligation on behalf of the insurance carrier to notify the City of any material change, cancellation or termination of coverage at least 30 days in advance of the effective date of such material change, cancellation or termination. Borrower shall deliver a copy of the certificate of insurance and loss payee endorsement to the City at the time of escrow closing, and Borrower shall annually deliver a copy of the certificate of insurance and loss payee endorsement to the City, signed by an authorized agent of the insurance carrier and setting forth the general provisions of

coverage. The copy of the certificate of insurance and loss payee endorsement shall be delivered to the City as follows:

City of Santa Ana, Community Development Agency
 20 Civic Center Plaza, M26
 P.O. Box 1988
 Santa Ana, Ca 92702
 Attention: Housing Manager

Any certificate of insurance required by this section must be in a form, content and with an insurance company that is acceptable to the City in its sole discretion.

14. Non-Waiver. Failure to exercise or delay in exercising any right the City may have or be entitled to, in the event of default hereunder, shall not constitute a waiver of such right or any other right in the event of a subsequent default.

15. Documents. Borrower has reviewed and agrees to execute the following documents in substantially the form as attached to this Agreement prior to receiving the City Loan, and any other documents or instruments reasonably required by City or a participating entity to complete the transaction contemplated herein:

- (a) Promissory Note (Exhibit C);
- (b) City Deed of Trust (Exhibit B);
- (c) Affordability Covenants (Exhibit D); and
- (d) Disclosure Statement and Notice of Rescission (Exhibit E)

Borrower agrees and acknowledges that this Agreement, the City Deed of Trust and the Affordability Covenants all be recorded against the Property with the County Recorder of the County of Orange and shall appear of record with respect to and as an encumbrance against the Property.

16. Further Assurances. Borrower shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form, as the City may from time to time find necessary or appropriate to effectuate its purposes in entering into this Agreement and making the City Loan.

17. Governing Law. This Agreement shall be governed by the laws of the State of California, with venue in Orange County.

18. Severability. In the event that any provision or clause of this Agreement conflicts with applicable law, such conflict will not affect other provisions of this Agreement which can be given effect without the conflicting provision, and to this end the provisions of the Agreement are declared to be severable.

19. **Amendment of Agreement.** No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by Borrower and the duly authorized representative of the City.

20. **Assignment by City Permitted.** The City may, in its sole and absolute discretion, assign its rights under this Agreement and/or its right to receive repayment of the City Loan without obtaining the consent of Borrower.

21. **Assignment of Borrower Prohibited.** In no event shall Borrower assign or transfer any portion of this Agreement or any rights herein without the prior express written consent of the City, which consent the City may give or withhold in its sole and absolute discretion. This provision shall not affect or diminish the City's right to assign all or any portion of its rights under this Agreement or to the proceeds of the City Loan hereunder.

22. **Relationship of Borrower and City.** The relationship of Borrower and City pursuant to this Agreement is that of debtor and creditor and shall not be, or be construed to be a joint venture, equity venture, partnership or other relationship.

23. **Notices.** (a) Except as otherwise expressly provided in this Agreement, in every case when, under the provisions of this Agreement, it shall be necessary or desirable for one party to serve any notice, request demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addresses as follows:

To Borrower: _____

To City: City of Santa Ana
 Community Development Agency
 20 Civic Center Plaza, M26
 P.O. Box 1988
 Santa Ana, CA 92702
 Attention: Housing Manager

24. **Attorney's Fees and Costs:** In the event that any action is instituted to enforce payment or performance under this Agreement, or otherwise in connection with this Agreement, the parties agree that the prevailing party shall be reimbursed by the other party for all costs and all attorney fees incurred by the prevailing party in such action.

25. **Entire Agreement.** This Agreement, together with all attachments hereto and all documents executed pursuant hereto, constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all prior negotiations, discussions and previous agreements between the City and Borrower concerning all or any part of the subject matter of this Agreement.

26. **Conflict of Interest.** No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement nor shall any member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interest.

27. **Captions.** The captions and headings in this Agreement are for convenience only and are not to be used to interpret or define the provisions hereof.

[/Signatures on following page/](#)

IN WITNESS WHEREOF, the parties have executed this Loan Agreement as of the day and year written below.

BORROWER

Dated: _____

By: _____

Name: _____

Dated: _____

By: _____

Name: _____

“CITY”

CITY OF SANTA ANA

By: _____

~~Kristine Ridge~~ Raul Godinez, II

City Manager

Dated: _____

APPROVED AS TO FORM:
City Attorney

By: Ryan O. Hodge
Assistant City Attorney

Dated: _____