# NOTICE TO HOMEBUYER:

*This Agreement explains the terms of the purchase assistance you are receiving through the HOME Investment Partnerships Program (HOME). This Agreement is separately enforceable from the Note and Deed of Trust for the Term in Section 2, unless you sell and repay the balance specified in Section 7. Read each paragraph carefully and ask questions regarding any sections you do not fully understand before you sign. This agreement will be enforced by loan documents as set forth in Section 1 below. You should be sure that you thoroughly understand these documents before you sign them.*

**DEFINITIONS**

**DEED OF TRUST:** A Deed of Trust is a legal document used in real estate transactions to secure a loan to purchase or refinance a property. If the borrower, in this case the First-Time HOMEBUYER (FTHB), defaults on the loan or fails to comply with the terms of the Deed of Trust and this written AGREEMENT, foreclosure and sale of the property to repay the debt can be initiated by the LENDER and trustee.

**HOMEBUYER:** For the First-Time HOMEBUYER Program, the HOMEBUYER is a person(s) who meets the definition of a First-Time HOMEBUYER under Section 8201(m) of the State of California HOME Program Regulations, or successor policy, and who receives financial assistance in the form of downpayment assistance through the HOME program.

**LENDER**: Lender refers to the City or County operating the FTHB Program as a State Recipient of the Department of Housing and Community Development HOME Program and has received an award of HOME funds to operate a First-Time HOMEBUYER Program or to undertake a First-Time HOMEBUYER Project**.**

**NET PROCEEDS:** The sales price minus primary loan repayment (other than HOME funds) and any closing costs. Net proceed calculations are used to determine total amount of funds available for recapture of HOME funds at the time of sale.

**PRIMARY LENDER:** A lender making the first trust deed mortgage to a First-Time HOMEBUYER under the program and to which any HOME FTHB loan will be subordinate.

**RECAPTURE:** Recaptured funds are HOME funds which are recouped by the LENDER when a housing unit assisted by the HOME program does not comply with the obligations of this AGREEMENT, and/or where the housing unit does not continue to be the principal place of residence of the assisted homebuyer for the full Affordability Period as required by federal statute.

**RIDER:** Your first mortgage LENDER may or may not have a Rider as part of your Mortgage. A Rider is a supplemental document that modifies or adds specific terms and conditions to the Deed of Trust. The Rider serves as an addendum to the Deed of Trust, customizing and clarifying the mortgage to accommodate specified needs and requirements of the parties involved, including local requirements of primary mortgage LENDER that are not included in the Deed of Trust. Any Rider to the First-Time Homebuyer Deed of Trust must be approved in advance, in writing by the LENDER, to be valid.

**SUBORDINATION**: The process of ranking home loans by priority of repayment. First-Time HOMEBUYER loans are generally in a second lien position, behind a primary lender’s mortgage loan. In the event the primary mortgage is paid off, the secondary mortgage moves into first position, unless the Lender agrees to subordinate to a new primary mortgage loan.

**THE AGREEMENT:**

**THIS AGREEMENT** is entered into this XX day of MONTH, YEAR by and between the City of CITY/COUNTY of ENTERNAME, a State of California municipal corporation (“**the CITY/COUNTY**”) and BUYERNAME(S), (the “**HOMEBUYER**”) and the State of California Department of Housing and Community Development HOME Program as a third-party beneficiary.

**WITNESSETH**

**WHEREAS:**

1. The CITY/COUNTY is a current grantee under the State of California HOME Investment Partnerships Program (“**HOME**” or “**HOME Program**”) administered by the United States Department of Housing and Urban Development (“**HUD**”) through the State of California Department of Housing and Community Development (“Department”) and is authorized by the Department to provide HOMEBUYER assistance in accordance with the Department’s Consolidated Plan; and
2. The HOME regulations at 24 CFR Part 92 govern the CITY’s/COUNTY’s implementation of the HOME Program and are made a part this Agreement; and
3. The CITY/COUNTY has determined that the HOMEBUYER meets the HOME Program eligibility requirements to purchase the dwelling located at PROPERTYADDRESS (the “**Property**”) at the price of $PURCHSASEPRICE (the “**Purchase Price”**) and will assume fee simple ownership upon closing.

**NOW, THEREFORE**, in accordance with the mutual understanding and agreements set forth herein, CITY/COUNTY and the HOMEBUYER agree as follows:

**SECTION 1. FORM, AMOUNT, and Use OF ASSISTANCE**

The CITY/COUNTY will provide the HOMEBUYER an amount not to exceed $DIRECTASSISTANCETOTAL (“**Loan**”) to assist the HOMEBUYER with a down payment, closing costs, and/or a portion of the Purchase Price of the Property, which is considered the direct HOME Assistance to the HOMEBUYER.

The Homebuyer agrees that the HOME Assistance will be used at closing as gap financing to cover closing costs and down payment towards the Purchase Price of the Property. This will reduce the total amount the HOMEBUYER will be required to borrow from a bank, credit union, or other lender in order to purchase the Property.

*{If signing the agreement prior to closing, the following provision can be used to clarify that the final HOME amount may change slightly.}* The amount of HOME Assistance will not be final until the CITY/COUNTY has updated all necessary underwriting and subsidy layering requirements based on final Purchase Price and/or closing costs.

The assistance will be provided in the form of a thirty-year (30) deferred loan. At closing, the Loan will be evidenced by a promissory note executed by the HOMEBUYER in favor of CITY/COUNTY (“**Note**”) and secured by a deed of trust securing the promissory note to be filed in the official real property records of the county in which the Property is located (“**Deed of Trust**”). The terms and duration of the Loan are specified in the Note and Deed of Trust, and the Note and Deed of Trust will be released upon repayment of the Loan under the terms set forth therein. The HOMEBUYER may, but is not required to, prepay the Loan, in whole or in part, at any time.

**SECTION 2. AGREEMENT TERM**

This Agreement will automatically terminate if the Homebuyer does not close and take title to the Property on or before ABSOLUTECLOSINGDEADLINE.

Otherwise, this Agreement will expire upon expiration of the Affordability Period as defined in Section 6 or satisfaction of the Deed of Trust, whichever is later.

This Agreement shall survive any prepayment of the loan and/or any release of the Deed of Trust that does not include a transfer of the Property and shall continue for the full Affordability Period, as defined in Section 6.

**SECTION 3. APPRAISED PROPERTY VALUE**

The CITY/COUNTY certifies that a certified property appraiser has appraised the property that is the subject of this AGREEMENT at a value of $ENTERAPPRAISED VALUE as evidenced by appraisal dated ENTERDATE.

**SECTION 4. ELIGIBLE MODEST HOUSING**

The CITY/COUNTY has verified that the purchase price of the housing does not exceed 95 percent (95%) of the median purchase price of homes for the area, as set forth in 24 CFR Part 92.254(a) and as codified in CITY’s/COUNTY’s HOME Program Guidelines and Resale and Recapture Policy.

**SECTION 5. PRINCIPAL RESIDENCE REQUIREMENT**

During the Affordability Period, barring a sale or transfer of title to the Property which shall be governed by Section 6 below, the HOMEBUYER shall at all times maintain the Property as their principal residence. Should the HOMEBUYER cease to maintain the Property as their principal residence, rent the residence to another party, or convert the Property to a non-residential use, the HOMBUYER will be in breach of this Agreement and subject to the Default and Enforcement provisions under Section 13.

**SECTION 6. AFFORDABILITY PERIOD**

The Affordability Period for the Property will begin on the date of recordation of the grant deed and deed of trust (“Completion date”) of the transaction as the date of recordation of the grant deed and deed of trust (“**Completion Date**”) and shall end five (5)/ten (10)/fifteen (15) years after the Completion Date (the “**Affordability Period**”). The CITY/COUNTY will provide a formal written notice to the HOMEBUYER of the Completion Date and the resulting expiration date of this Affordability Period and this Agreement. Upon issuance of such notice, this Agreement shall be deemed amended to reflect the expiration date of the Affordability Period.

If the HOMEBUYER sells or transfers ownership of the Property voluntarily or involuntarily, including via foreclosure or deed in lieu of foreclosure, the Affordability Period will end upon the recapture of the full amount of the direct HOME Assistance by the CITY/COUNTY as described in Section 9 below.

**SECTION 7. Homebuyer Representations**

By signing this Agreement, the HOMEBUYER attests to the following:

* The HOMEBUYER warrants that all information and documentation provided to the CITY/COUNTY is true and correct. The HOMEBUYER has fully disclosed all income and assets to the CITY/COUNTY and warrants that the HOMEBUYER’s household or financial situation has not changed materially since the application for HOME Assistance was made. The HOMEBUYER acknowledges that any material discrepancies or misstatements may result in the HOMEBUYER’s disqualification from participation in the program and shall be deemed a breach of this Agreement and the Loan, and the HOMEBUYER will be required to repay the entire HOME investment amount.
* The HOMEBUYER has completed homeownership counseling as required by the CITY/COUNTY and will complete any post-closing counseling required by the CITY/COUNTY.
* The Homebuyer has agreed to purchase a dwelling unit that meets HOME Program requirements, and that the dwelling unit must meet Program property standards prior to purchase.
* The HOMEBUYER understands and agrees to the requirements stated in this Agreement for the Agreement Term.

**SECTION 8. Homebuyer Responsibilities**

The Homebuyer agrees to the following to meet the requirements of this assistance:

* The HOMEBUYER will provide at least the following buyer funds required for closing: $XXXX in their own funds toward the purchase price and/or closing costs.
* The HOMEBUYER will occupy the property as the principal residence for the Affordability Period as described in Sections 5 and 6.
* The HOMEBUYER will maintain the property, maintain hazard insurance, and pay all required taxes during the term of this Agreement as described in Section 10.
* The HOMEBUYER will provide information as required by the CITY/COUNTY to monitor compliance with Program requirements.
* The HOMEBUYER will comply with the refinancing policy stated in Section 11.
* In the event of sale of the property during the Agreement Term, the HOMEBUYER will notify the CITY/COUNTY and comply with Recapture requirements in Section 9.

**SECTION 9. RECAPTURE OF DIRECT HOME ASSISTANCE**

In compliance with the HOME Rule at 24 CFR 92.254(a)(5), if the HOMEBUYER sells or otherwise voluntarily or involuntarily transfers title to the Property during the Agreement Term, including transfer as a result of foreclosure or deed in lieu of foreclosure, then the outstanding direct HOME Assistance to the Homebuyer will be subject to recapture by the CITY/COUNTY.

The “Recapture Amount” will be determined as follows:

*{insert recapture provisions from the options available in the State HOME Resale and Recapture policy, which must match with your HCD-approved First-Time Homebuyer Program Guidelines Section 7.0}*.

If there are no net proceeds of sale or the net proceeds are insufficient to repay the Recapture Amount, then the entire net proceeds, if any, will be recaptured and retained by CITY/COUNTY to satisfy both this Agreement and the Loan. The term “net proceeds” is defined as the sale price less the balance due on superior secured debt and closing costs incurred by the Homebuyer at sale or transfer. In the event the net proceeds are less than the outstanding Loan balance, the CITY/COUNTY reserves the right to determine whether the sales price is comparable to the sales price in an arms-length transaction for a similar unit and to evaluate the closing costs being charged to the Homebuyer to ensure they are reasonable and customary.

**Net proceeds of sale in excess of the outstanding direct HOME Assistance will be retained by the HOMEBUYER.**

To facilitate the expeditious administration of this Section, the HOMEBUYER shall provide notice to the CITY/COUNTY of any anticipated transfer of title, including but not limited to a sale or foreclosure.

If the HOMEBUYER is determined to be in violation of this Agreement, the full amount of the Loan shall be due and payable as stated in Section 13.

**SECTION 10. INSURANCE and Taxes**

At all times during the term of this Agreement, the HOMEBUYER shall maintain a valid and current hazard insurance policy on the Property for the current appraised value of the Property and naming the CITY/COUNTY as an additional loss payee in primary coverage. Failure to maintain a valid and current insurance policy will be considered a breach of this Agreement, and the CITY/COUNTY will have the right to secure insurance for the Property and charge such costs to the HOMEBUYER or to foreclose on its Deed of Trust, if necessary, to protect the HOME program investment. If the Property is in a 100-year floodplain, the HOMEBUYER shall maintain a current and valid flood insurance policy on the Property. Evidence of insurance must be provided at closing of the Loan and annually thereafter upon request of the CITY/COUNTY.

At all times during the term of this Agreement, the HOMEBUYER shall pay property taxes and other assessments due to local taxing authorities.

**SECTION 11. Refinancing**

During the Agreement Term, the HOMEBUYER will notify the CITY/COUNTY of the intent to refinance any loan that is senior to the HOME Deed of Trust. The CITY/COUNTY will approve subordination of the HOME debt to only a new loan in compliance with its then-current refinancing policy.

**Section 12. City/County Responsibilities**

As a State Recipient of the HOME Participating Jurisdiction Program, the CITY/COUNTY is ultimately responsible to the State of California for compliance with all HOME requirements, including the ongoing enforcement of this Agreement regarding principal residency and recapture.

* The CITY/COUNTY has determined the HOMEBUYER to be eligible according to the HOME Program’s income limits and other eligibility requirements and will review any changes to eligibility at time of closing.
* The CITY/COUNTY has determined the property to be eligible under the HOME Program’s requirements, including Program purchase price limits, Maximum Per-Unit Subsidy Limits, and property standards.
* The CITY/COUNTY has completed the environmental review required by 24 CFR Part 58 and determined that the property and assistance meet federal requirements.
* The CITY/COUNTY has determined the amount of HOMEBUYER’s assistance to be reasonable and in compliance with Program requirements and its underwriting policy and may adjust the assistance based on final price, costs, and underwriting.
* The CITY/COUNTY will provide any HOME funds required at closing.
* The CITY/COUNTY will record the Deed of Trust and retain this Agreement and the Note for the Agreement Term.

The CITY/COUNTY will review, monitor, or seek to confirm the HOMEBUYER’s ongoing compliance with the terms of this Agreement and the Loan, including but not limited to principal residency. The CITY/COUNTY will enforce the other provisions of this Agreement and the recorded documents.

* The CITY/COUNTY may issue notices of violation, require corrective actions, or seek performance using any and all legal remedies available.

**SECTION 13. DEFAULT AND ENFORCEMENT**

In the event the HOMEBUYER violates any terms of this Agreement or any other agreement between the HOMEBUYER and the CITY/COUNTY, the CITY/COUNTY shall issue a notice of violation to the HOMEBUYER. Upon receipt of such a notice, the HOMEBUYER agrees to remedy the violation within 30 days or, in the case of violations requiring longer cure periods, the CITY/COUNTY may allow for a period of up to 90 days to correct the violation. In such cases, the HOMEBUYER must take action to begin corrections within 30 days of the date of the CITY’s/COUNTY’s notice of violation. Upon the HOMEBUYER’s failure to correct the violation within the allotted time, the CITY/COUNTY may take additional corrective action including suing for specific performance, declaring a default in the Loan and initiating foreclosure proceedings, and seeking any other available legal remedies.

In the event of the HOMEBUYER’s uncured violation of the principal residency provisions of Section 5, the HOMEBUYER will be required to repay the entire HOME investment in the Property.

**SECTION 14. ONGOING ANNUAL RECERTIFICATION REQUIREMENTS**

CITY/COUNTY is responsible for ensuring that First-Time HOMEBUYERS comply with the requirements of this AGREEMENT and as codified in the loan documents. This includes the requirement that the assisted home be maintained as the principal place of residence by HOMEBUYER for the entirety of the Affordability Period. The Department requires that the CITY/COUNTY performs annual recertification of compliance. The Department monitors the CITY/COUNTY to ensure that these requirements are met. HOMEBUYER acknowledges that annual reviews will be conducted, and that the HOMEBUYER must comply with the CITY’s/COUNTY’s recertification process and requirements as part of the conditions for receipt of HOME assistance and that failure to do so constitutes a breach of this AGREEMENT.

**SECTION 15. MISCELLANEOUS**

This Agreement shall be construed and interpreted in accordance with State of California law. In the event of legal action resulting from a dispute hereunder, the parties agree that the State and federal courts of the State of California shall have jurisdiction and that the proper forum for such action shall be COUNTYNAME County, California.

None of the rights and remedies conferred upon or reserved to the CITY/COUNTY under this Agreement is intended to be exclusive of any other rights, and each right shall be cumulative and concurrent, and may be enforced separately, successively, or together, and may be exercised from time to time as often as may be deemed necessary by the CITY/COUNTY.

Each party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of interpretation arises, this Agreement is to be construed as if the parties had drafted it jointly. Any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived.

The paragraph headings contained herein are for convenience in reference to this Agreement and are not intended to define or to limit the scope of any provision of this Agreement. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine or neutral gender, shall include all other genders and singular nouns used herein shall include the plural and vice versa.

Executed and effective as of the day and year first above written and for the purposes herein expressed, by the CITY/COUNTY, signing by and through its Authorized Signer, AUTHORIZEDSIGNERNAME, TITLE, and by the HOMEBUYER(s).

DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Print Name of HOMEBUYER #1 Signature of HOMEBUYER #1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name of HOMEBUYER #2 Signature of HOMEBUYER #2

CITY/COUNTY of ENTERNAME Authorized Signer

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name and Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

All signatures must be acknowledged by a notary.