

Georgia Department of Community Affairs
Community HOME Investment Program
Down Payment Assistance Loan Agreement

This Loan Agreement is executed _____, 20____, between _____ (“Borrower”) and the State Recipient or Sub-recipient of _____ (“Lender”).

RECITALS:

A. Borrower has applied to Lender for a loan (the “Loan”) to assist Borrower in purchasing a single family home that will be Borrower’s primary residence, which home is located at _____, Georgia (the “Property”). The Loan is being made under the Community HOME Investment Program (“CHIP”), which is part of the HOME Program, which is administered on behalf of the Georgia Housing and Finance Authority by the Georgia Department of Community Affairs (“DCA”).

B. This Agreement will set forth the parties’ agreements relating to the Loan.

For good and valuable consideration, including the making of the Loan, the parties agree as follows:

1. The Loan.

(a) Terms and Security. The Loan amount shall not exceed \$_____, and the Loan is a deferred payment loan. The payment terms, interest rate, and other requirements are specifically set forth in the Promissory Note from Borrower to Lender for the Loan amount (the “Note”), which will be executed contemporaneously with this Agreement or at the closing of the purchase of the Property (the “Closing”). The terms of the Note are incorporated in this Agreement by reference. The payment of the Note shall be secured by a Deed to Secure Debt (the “Deed”) from Borrower to Lender for the Property. If this Agreement is executed in advance of the Closing, the Closing must occur no later than _____, 20____.

(b) Conditions for Closing and Disbursement. Lender shall not be obligated to close the Loan or disburse any of the Loan proceeds until it has received a copy of the sales contract for the Property, a satisfactory appraisal, confirmation of other funds needed to complete the purchase, and satisfactory proof or confirmation of satisfaction of all other DCA/CHIP requirements and the HOME regulations.

2. Use of Loan Proceeds. Borrower may only use the Loan proceeds for a down payment on the purchase of Property and for costs related to the Closing.

3. Restrictions.

(a) Use and Transfer Restrictions. During the entire “Affordability Period” (as defined below), Borrower’s family shall continuously use and occupy the Property as its principal residence. Borrower shall not lease or voluntarily or by operation of law sell all or any part of the Property or any interest in the Property during the Affordability Period. Any

abandonment of the Property or other breach of this covenant shall be an “Event of Default.” As used in this section, “family” has the same meaning as in the HOME regulations (currently found at 24 CFR §92.1 *et seq.*) and the “Affordability Period” is the period starting on the date of the Deed and continuing for 6 (six) years. If this covenant is breached before the expiration of the Affordability Period, the Loan amount (or a portion of it) shall be subject to recapture by Lender, as specifically set forth in the Note.

(b) Foreclosure and Revival of Restrictions. Subject to the remainder of this section, if there is an assignment of an FHA mortgage to HUD or if a person forecloses Borrower's interest in the Property or takes a deed in lieu of foreclosure and such person's mortgage or security deed was prior to the Deed, the restrictions and covenants in this section shall terminate and no longer affect the Property. Notwithstanding such a foreclosure or deed in lieu of foreclosure, however, the covenants and restrictions in the Deed and this section shall be revived and shall remain in force for the remainder of the Affordability Period when and if the owner of record before such foreclosure acquires or obtains any ownership interest in the Property at any time during the Affordability Period.

4. Inspections. Until the Loan is paid in full, Borrower shall permit Lender or its representatives to enter upon the Property to inspect the Property. This provision shall not impose upon Lender any obligation to inspect the Property or any liability for the failure to detect any defect or problem with the Property or for the failure to act with respect to any such defect or problem.

5. Federal Requirements. Borrower shall comply with all regulations governing the HOME Program and all DCA/CHIP requirements. Borrower acknowledges and agrees that the following CHIP requirements (the “CHIP Requirements”) apply to the Loan: (a) Borrower’s total household income cannot exceed 80% of the area media income; (b) the value of the Property cannot exceed 95% of the median purchase price for the area in which the Property is located; (c) upon purchase of the Property and during the Affordability Period, Borrower must have fee simple title to the Property; (d) the Property must be the primary residence of Borrower; (e) the Property cannot be owned by a religious organization; (f) the Property must comply with all environmental law, rules, and regulations; (g) Borrower must comply with the insurance requirements set forth in the Deed, including obtaining and maintaining fire and hazard insurance on the Property in an amount sufficient to cover the amount of the Loan and any other mortgage encumbering the Property. Borrower shall satisfy or comply with all CHIP Requirements and the failure to do so is an Event of Default.

6. Indemnification. Borrower shall indemnify Lender, and its officials, officers, agents, and employees against all claims, liabilities, losses, costs, or expenses caused by the performance of this Agreement.

7. Borrower’s Representations and Warranties. Borrower warrants and represents as follows (and acknowledges that all of these warranties and representations are material): (a) The matters contained in the Application for the Loan were true and complete in all material respects as of the date of filing and remain true and complete now. (b) No official, officer, agent, or employee of Lender or any member of the immediate family of such person has any interest in this Agreement or any proceeds or benefits from it or the Property. (c) Borrower is not presently debarred, suspended, proposed for debarment, suspension, declared ineligible, or voluntarily excluded from

participation in this transaction or the HOME Program by any federal department or agency. (d) Borrower will be the owner in fee simple of the Property. (e) no tenant living in the Property within 12 months before the Closing has been or will be displaced by the sale of the Property. (f) All representations and warranties made in this Agreement shall survive the closing of the Loan and the closing of the purchase of the Property.

8. Event of Default. In addition to any other “Events of Default” set forth elsewhere in this Agreement, the following shall constitute Events of Default under this Agreement: (a) Borrower’s breach of any covenant under this Agreement, including Borrower’s failure to occupy the Property as Borrower’s primary residence; (b) a default under the Note or Deed; (c) any warranty or representation in this Agreement is false or materially misleading; or (d) Borrower files or has filed against Borrower any bankruptcy proceeding.

9. Remedies. If an Event of Default occurs, Lender may, in its sole discretion, pursue any or all of the following remedies: (a) immediately suspend or terminate this Agreement; (b) declare the Note immediately due and payable and institute proceedings for its collection; (c) exercise any and all rights under the Deed; and (d) take any other action in law or equity. Lender’s rights and remedies under this Agreement, the Note, and the Deed are cumulative. Any election of any right or remedy will not be deemed to be an election of that right or remedy to the exclusion of any other right or remedy.

10. Miscellaneous.

(a) Lender will charge Borrower a project delivery cost in connection with the Loan.

(b) As used in this Agreement, “Borrower” shall mean all persons signing this Agreement and borrowing money from Lender. The word “including” means “including (but not limited to)” unless specifically stated to the contrary.

(c) This Agreement shall be construed, interpreted, and enforced in accordance with Georgia law.

(d) All notices required under this Agreement shall be in writing and addressed to Borrower at the Property address and to Lender at _____. Notice shall be mailed by certified mail, return receipt requested, postage properly prepaid, or hand delivered. Notice shall be deemed given, received, and effective 3 days from the date of mailing or on the date of delivery. Either party may change the address for notice by giving the other party notice of the new address in compliance with this section.

(e) This Agreement, the Note, and the Collateral Assignment of the Deed to Secure Debt, and the Deed contain the entire agreement between the parties relating to the subject matter of this Agreement.

(f) This Agreement will inure to the benefit of and be binding upon the parties and their successors, representatives, and assigns.

(g) Borrower agrees to perform any and all further acts and to execute and deliver any and all additional documents which may be reasonably necessary to carry out the terms of this Agreement or correctly set forth the terms of this Agreement.

(h) Borrower may not assign any right, benefit, or obligation of Borrower under this Agreement without Lender's prior written approval, which Lender may grant or deny in its sole and absolute discretion.

(i) Neither party is an agent or representative of the other. Borrower is solely responsible for procuring and providing all personnel, facilities, materials, and services necessary to perform Borrower's obligations under this Agreement. Nothing in this Agreement shall be construed to create a partnership or joint venture between the Borrower and Lender, and Borrower acknowledges and agrees that the sole relationship of the parties is that of borrower and lender.

IN WITNESS WHEREOF, the parties have executed this Agreement on the above date.

BORROWER:

Name: _____
[please print]

Name: _____
[please print]

LENDER:

State Recipient or Sub-recipient of

By: _____

Title: _____