

CASE NUMBER _____
(office use only)

**CITY OF PASSAIC
DEPARTMENT OF COMMUNITY DEVELOPMENT
330 PASSAIC STREET
PASSAIC, NEW JERSEY 07055**

**FIRST TIME HOMEBUYER ASSISTANCE PROGRAM
AGREEMENT**

HUD #

APPLICANT NAME(S): _____

CURRENT ADDRESS: _____

PROPERTY LOCATION: _____, Passaic, NJ 07055

All Applicants (as defined below) shall understand that they may be eligible to receive First Time Homebuyer Program funding under the City of Passaic’s First Time Homebuyer Assistance Program and that the terms and conditions for receipt of the funding are as set forth in the City of Passaic’s program guidelines and Federal regulations. It is also understood by all Applicants that if assistance is received the following must be agreed to:

1. OVERVIEW AND DEFINITION

The City of Passaic’s First Time Homebuyer Program will provide qualified Low Income Households or Very Low Income Households with Homebuyer Assistance in the form of a forgivable deferred payment second mortgage. Resale restrictions will conform to 24 CFR 92.254.

Only the homeowner-occupied unit will be assisted, even if the property is a multi-family dwelling. The Affordable Housing Unit (as defined below) will be restricted to a household that, at the time of occupancy, qualifies as a Low Income Household or Very Low Income Household (as defined below). The Applicant must use the Affordable Housing Unit as their principal residence during the entire time of the Affordability Period. Affordable housing shall be restricted for no less than five years for existing property, and the length of affordability will be determined by the dollar amount of assistance.

In providing this assistance, the City of Passaic will apply the following definitions set forth in the HOME Program Federal Regulations:

AFFORDABLE HOUSING UNIT – shall mean the house purchased by the Applicant with HOME Funds provided by the City of Passaic.

AGREEMENT/NOTE- shall mean this written First Time Homebuyer Assistance Program Agreement between the City of Passaic and the Applicant.

APPLICANT – shall mean the Low Income Household or Very Low Income Household who is purchasing the Affordable Housing Unit using HOME Funds from the City of Passaic.

CERTIFIED HOUSEHOLD - shall mean any eligible household, whose estimated total Gross Annual Income has been verified, whose financial references have been approved and who has received certification as a Low or Very Low Income Eligible Household.

CLOSING COSTS - shall mean the costs of a real estate sale or transaction that are incurred by the buyer and seller or owner, (if a refinance of existing mortgage loan) at the time of sale or transaction, including, but not limited to: attorney’s fees, mortgage points, real estate transfer fee, and applicable real estate broker fees.

ELIGIBLE HOUSEHOLD - shall mean, a household as defined as specified in Federal Regulation at 24 CFR 570.3 which states, “Household means all the persons who may 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 share living arrangements.”

HOME - shall mean the Home Investment Partnership Program as detailed in 24 CFR part 92.

HOME FUNDS – shall mean HUD funds provided to the eligible First Time Homebuyer Program Applicant under this Agreement with the City of Passaic’s Community Development Department.

HUD – shall mean the Government Agency of the United States of America, is an acronym meaning the Department of Housing and Urban Development.

MORTGAGEE - shall mean the qualified Low Income or Very Low Income owner who is purchasing the Affordable Housing Unit using HOME Funds.

MORTGAGOR - shall mean the City of Passaic or its assignee.

MORTGAGE – shall mean the instrument of even date executed by the Applicant and filed at the County Clerk’s office, to show evidence of a lien on the Affordable Housing Unit purchased with HOME Funds, or the secured property location.

NEWLY CONSTRUCTED UNIT – shall mean, for the purposes of the First Time Homebuyer Assistance Program, a newly constructed unit and shall be a housing unit which received an initial certificate of occupancy or equivalent document within a (1) one-year period before the City of Passaic commits HOME Funds to the project and not previously occupied by a permanent legal resident.

OWNER - shall mean the title holder of record, (by indenture or deed), as same is reflected in the most recently dated and recorded deed for the Affordable Housing Unit.

PRINCIPAL RESIDENCE – shall mean the Affordable Housing Unit assisted under the First Time Homebuyer Assistance Program that must be the principal residence of the Applicant. The Affordable Housing Unit must be occupied by the Applicant and that Applicant must maintain continuing residence in the Affordable Housing Unit for a period of more than 50% (percent) of each calendar year during the entire Restricted Affordability Period. The deed or deed covenant and the loan documents, if existing, between the Applicant and the City of Passaic shall incorporate this requirement. (Also referred to as principal/primary living residence)

PURCHASER – shall mean a Certified Household who has signed a contract to purchase an Affordable Housing Unit subject to a mortgage commitment and closing.

RESTRICTED AFFORDABILITY PERIOD – shall mean the entire length of time that affordability controls will remain in effect. Such period shall begin on the day after the City has completed all information and closed out the activity in HUD’s Integrated Disbursement and Information System (IDIS).

2. HOUSEHOLD ELIGIBILITY PROVISIONS AND DEFINITIONS

GROSS ANNUAL INCOME – shall mean the total amount of all sources of the Applicant’s total household income from all members in the Applicant’s household including, but not limited to, salary, wages, interest, tips, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. **More specifically, for purposes of this Agreement “Household Income” shall be defined as “Annual Income” as defined in the annual income calculation called for in the Section 8 Part 5 regulation (24 CFR Part 5).**

LOW INCOME HOUSEHOLD – shall mean a household whose Gross Annual Income is equal to, or less than 80% of the annual median income for households of that particular size, as published by HUD for the area comprising of the City of Passaic . The Applicant must be a Low Income Household at either the time the household initially occupies the Affordable Housing Unit or at the time the HOME Funds are invested, whichever is later. However, income will be verified at the time of processing the Applicant. That verification of income will be valid for a six-month period. An update of the Applicant’s income will be required only if more than six months has transpired from the initial verification to occupancy of the Affordable Housing Unit.

VERY LOW INCOME HOUSEHOLD – shall mean a household whose total Gross Annual Income does not exceed 50% of the median gross income figure established by geographic region and household size using the income guidelines approved for use by HUD.

QUALIFYING HOUSEHOLD – To qualify for First Time Homebuyers Assistance Program, the Applicant must be a first time homebuyer household as defined by a household that HAS NOT owned a house during the three-year period immediately prior to the purchase of the Affordable Housing Unit with HOME Funds. The Qualifying Household must also be a Low Income or Very Low Income Household as defined above.

PRINCIPAL RESIDENCE – shall mean the Applicant must use the Affordable Housing Unit as its principal or primary residence, as defined above during the entire Restricted Affordability Period. The deed or deed covenant and the loan documents between the Applicant and the City of Passaic shall incorporate this requirement.

3. ELIGIBLE PROPERTIES

The Applicant must use the City of Passaic’s First Time Homebuyer funds for the purpose of purchasing a property which is either a newly constructed housing unit or an existing housing unit. Eligible Properties include : A) a 1-4 family property (one to four units); B) a condominium or townhouse unit; C) a manufactured home, or; D) a cooperative housing unit. A multi-family unit is a dwelling with 2 or more units.

4. FORM OF OWNERSHIP

Homeownership shall mean ownership in fee simple or a 99-year leasehold interest in a cooperative, or equivalent form of ownership approved by HUD and, is generally evidenced by a recorded deed which is on file at the registrar’s office at the County Clerk’s office.

The ownership interest shall be subject to the following: 1. Mortgages, Deeds of Trust or other debt instruments approved by the City; and 2. any other encumbrances or restrictions that do not impair the marketability of the ownership interest, other than the HOME program restrictions on resale.

5. HOMEBUYER ASSISTANCE TO BE PROVIDED USE OF FUNDS AND SECURITY AGREEMENT

Type of Assistance:

- A. Up to \$39,500 in HOME Funds will be provided in the form of a forgivable loan towards down payment for first time homebuyers.
- B. Subsidy Limits: Minimum HOME Investment in the amount of \$1,000 in the project. The Maximum HOME Investment is not to exceed \$39,500 in the project.
- C. At the time of purchase, a deed restriction regarding the recapture of HOME Funds during the Restricted Affordability Period will be placed on the Affordable Housing Unit and recorded.
- D. Recapture provisions will be applied and the **entire amount** of HOME Funds will be recaptured.
- E. In cases where net proceeds are insufficient to recapture the full amount of the HOME Funds plus enable the homeowner to recover their entire investment (down payment and capital improvements made by the owner), the City will use recapture provisions as set forth in 24 CRF Part 92.254(a) (5) (ii) A (3) – Shared Net Proceeds. Net proceeds are the sales price minus loan repayment (other than HOME Funds) and closing costs. Net proceeds will be divided as set forth in the following mathematical formula:
 - 1. $(\text{Home Investment}/\text{Home Investment} + \text{Applicant investment}) \times \text{Net Proceeds} = \text{HOME amount to be recaptured}$
 - 2. $(\text{Homeowner Investment}/\text{Home Investment} + \text{Applicant investment}) \times \text{Net Proceeds} = \text{amount to Applicant}$
- F. Recaptured funds will be made available to the First Time Homebuyers Program. The loan carries no repayment penalty and can be repaid at any time. If the Applicant retains ownership of the property and continues to reside there for the full duration of the Restricted Affordability Period, no recapture restrictions will apply and the loan will be forgiven.
- G. Property Value at Time of Purchase – All first time homebuyers' projects require an appraisal. The appraised value of the Affordable Housing Unit (not the purchase price) must not exceed the HUD's published HOME Homeownership Value Limit for FY 2016 for the area. If rehabilitation is required, the appraised value of the property after rehabilitation cannot exceed the HUD's published HOME Homeownership Value Limit for FY 2016.

6. PROPERTY STANDARDS

The assistance to be provided as specified in this Agreement herein is to assist in the financing of only the acquisition of the Affordable Housing Unit. Therefore, the Affordable Housing Unit must meet Federal Housing Quality Standards (HQS), as published in Federal Regulations 24 CFR Part 882.109, and all applicable State and Local codes and shall have been the subject of a current Certificate of Occupancy or equivalent document issued by the City of Passaic. For certain manufactured homes, Federal Regulations under 24 CFR Part 3280, may be in effect.

A First Time Homebuyer Program inspector will determine property qualification through a property inspection. If a property doesn't meet HQS then it will not qualify for the program. The Applicant will be required to maintain the Affordable Housing Unit up to City codes for the entire duration of the Restricted Affordability Period. Therefore, the Affordable Housing Unit will not be permitted to participate in any other federally funded program for purposes of rehabilitation during the Restricted Affordability Period.

7. PROPERTY VALUE

The appraised value of the Affordable Housing Unit to be acquired by the Applicant shall not exceed the **HOME Homeownership Value Limit for FY 2016**, as published by HUD (www.hud.gov), for the type of housing being purchased. An appraisal is required FOR ALL First Time Homebuyer projects. Said appraisal shall be completed prior to approval of HOME Funds from the City of Passaic.

8. AFFORDABILITY REQUIREMENTS/ CONTROLS AND RESALE RESTRICTIONS

8.1. Definition of Affordable

For the purposes of the First Time Homebuyer Assistance Program, “affordable” is achieved if the monthly payments for: principal, interest and escrow items (i.e., property taxes, property insurance and mortgage insurance if needed/or required) do not exceed 30% (thirty percent) of the Gross Annual Income of the Applicant.

8.2. Affordable Housing Term

The assisted unit must remain affordable for the entire duration of the Restricted Affordability Period established which is based on the amount of total HOME assistance provided. After the applicable Restricted Affordability Period, the Affordable Housing Unit may be sold at any price to any homebuyer. Such period shall begin on the day after the City has completed all information and closed out the activity in IDIS and shall remain in effect for a period of either five or ten years depending on the amount of HOME Funds provided as outlined in the table below.

Amount of HOME Funds Provided	Restricted Affordability Period
\$1,000 < \$14,999	5 years
\$15,000 - \$40,000	10 years

9. RECAPTURE OF HOME SUBSIDY

The City of Passaic may, at its sole option, allow the affordability controls to extinguish subject to recapture of the full amount of the HOME Funds provided by the HOME program, or if the net proceeds are less than the full amount of the HOME Funds, it may recapture the net proceeds. Such recaptured net proceeds will be used to assist other first time homebuyers. Net proceeds means, the sales prices minus (-) repayment of the first mortgage, Applicant equity investment, eligible Applicant return on investment as specified in paragraph 11 below and closing costs.

10. REPAYMENT PROVISIONS/ AND REMEDIES

10.1. In General – In the event of any default or violation to this Agreement contained herein, the City of Passaic shall give written notice in the form of a “Notice of Violation” of said contract to the Applicant specifying the nature of the default or violation. The Notice of Violation shall specify the particular infraction and shall advise the Applicant that his or her right to continued ownership of the Affordable Housing Unit may be subject to forfeiture and that the City of Passaic may declare the Applicant in default of this Agreement if such infraction is not cured within thirty (30) days of receipt of the Notice. The Applicant shall, upon receipt of the Notice of Violation from the City of Passaic, proceed to immediately remedy the default or violation, within thirty (30) days, after receipt of such Notice of Violation.

10.2. Immediate Repayment – If after the 30 (thirty) day period of receipt of the Notice of Violation, , the Applicant does not notify the City of Passaic of actions taken to correct the default or violation, the City of Passaic shall require immediate repayment of the full amount of HOME Funds.

10.3 Foreclosure - If the after an event of default or violation that has not been cured within thirty (30) days of receipt of the Notice of Violation, the Applicant does not repay the HOME Funds when demanded by the City, the City may use any and all remedies at its disposal to recapture the HOME Funds, including but not limited to foreclose on this Agreement and the Mortgage.

11. SALE OF PROPERTY

If the Applicant sells the Affordable Housing Unit during the Restricted Affordability Period, recapture provisions will be applied, and the entire amount of HOME Funds will be recaptured from the sale.

Excess Proceeds upon Foreclosure: In the event of a foreclosure sale, the owner of the Affordable Housing Unit shall be personally obligated to pay to the City of Passaic any surplus funds. In cases where net proceeds are insufficient to recapture the full amount of the HOME Funds plus enable the Applicant to recover their entire investment (down payment and capital improvements made by the owner), the City will use recapture provisions as set forth in 24 CRF Part 92.254(a) (5) (ii) A (3) – Shared Net Proceeds. Net proceeds are the sales price minus loan repayment (other than HOME Funds) and closing costs. Net proceeds will be divided as set forth in the following mathematical formula:

$$\frac{\text{HOME investment}}{\text{HOME investment} + \text{Applicant investment}} \times \text{Net proceeds} = \text{HOME amount to be recaptured}$$

$$\frac{\text{Applicant investment}}{\text{HOME investment} + \text{Applicant investment}} \times \text{Net proceeds} = \text{amount to Applicant}$$

12. ENFORCEMENT OF PROVISIONS

A deed covenant will be used by the City of Passaic to ensure that the Applicant retains the Affordable Housing Unit as the principal/primary living residence. The deed will also include covenants regarding the resale requirements and affordability controls specified in Sections 8, 9, 10 and 11 captioned above in this Agreement.

A promissory Note/Agreement and Mortgage Note shall be used by the City of Passaic to ensure that all provisions of the HOME Funds terms, restrictions and conditions and controls are met.

If the Affordable Housing Unit is not maintained as the Applicant’s principal residence for the entire duration of the Affordability Period, the Applicant will be in default of this Agreement and will be subject to recapture of the entire amount of net HOME Funds. If after an event of default that has not been cured within thirty (30) days, the Applicant does not repay the HOME Funds when demanded by the City, the City may use any and all remedies at its disposal to recapture the HOME Funds, including but not limited to foreclose on this Agreement and the Mortgage.

13. SEVERABILITY

If any portion of this Agreement shall be determined to be invalid or unenforceable under applicable Federal, State, or Local laws, such determination shall not affect the remaining provisions of this Agreement. All such provisions shall remain in full force and effect.

14. COVENANTS RUNNING WITH LAND

The covenants contained herein this Agreement shall run with the land and be construed as running with the land, and the same shall be binding upon the parties hereto, their assigns and successors in title or in interest for the duration of the Restricted Affordability Period.

15. LEAD AND LEAD BASED PAINT

Additional notices and/or disclosures will be given to the Applicant during processing and at closing, as to Lead and Lead Based Paint described in the Lead Based Paint Poisoning Act of 1971 and under Federal Regulations 24 CFR Part 35.

16. DEFAULT

The City of Passaic may declare the Applicant in default on this Agreement if:

- 1. The Applicant fails to comply with the provisions of this Agreement or the Mortgage;**
- 2. The Applicant fails to make any payment required by such Agreement;**
- 3. The Applicant fails to keep any promises made in this Agreement;**
- 4. The ownership of the Affordable Housing Unit is changed for any reason without compliance with the terms of the Agreement;**
- 5. The holder of any lien on the Affordable Housing Unit starts foreclosure proceedings; or**
- 6. Bankruptcy, insolvency or receivership proceedings are started by or against any of the Applicants.**

Default of this Agreement as stated in prior sections, including Section 5 and moving forward to Section 17 will have a serious adverse effect on the Applicant's credit rating with present and future creditors.

17. OTHER PROVISIONS

In addition to the provisions outlined and specified in this Agreement captioned above, the assistance to be provided by the City of Passaic shall require the Applicant's compliance with the following provisions:

1. The Applicant shall comply with all of the terms of this Agreement, Mortgage and Mortgage Note to be executed, with this HOME Assistance transaction.
2. The Applicant shall own and have the right to mortgage the Affordable Housing Unit to the City of Passaic at the time of loan closing. The Applicant shall defend the ownership of the Affordable Housing Unit against all claims.
3. The Applicant shall pay all real estate taxes, assessments, water and sewer charges, and other charges against the Affordable Housing Unit when due, and shall not permit any liens or encumbrances against the Affordable Housing Unit.
4. The Applicant shall maintain hazard insurance on the Affordable Housing Unit. This insurance must cover all mortgage liens on the Affordable Housing Unit and cover loss or damage caused by fire and other hazards, normally included under "extended coverage" insurance. It must also include other hazard coverage as the City of Passaic may reasonably require. If the Affordable Housing Unit is deemed to be in a "Flood Zone", then Flood Insurance will also be a requirement to provide the Affordable Housing Unit with insurance against the loss of property due to flooding. The insurance company, agent or broker, amounts of coverage, and forms of all policies, must be acceptable to the City of Passaic. As evidence of this insurance coverage, copies of these policies must be provided to the City of Passaic. The City of Passaic shall be listed as Mortgagee /Loss Payee as follows:

The City of Passaic
Department of Community Development
330 Passaic Street Passaic, New Jersey 07055
Its Successors and/or Assigns

5. The Applicant shall keep the Affordable Housing Unit in good repair and shall not damage, destroy, or abandon the Affordable Housing Unit, or do anything that will reduce the value of the Affordable Housing Unit.
6. The Applicant shall pay all payments due on all liens on the Affordable Housing Unit and not violate any terms of any other Mortgage.
7. The Applicant shall, without exception, allow the inspection of the Affordable Housing Unit by the City of Passaic during the Restricted Affordability Period to enable verification of compliance with property maintenance requirements related to the provision of this assistance.

8. During the entire duration of the Restricted Affordability Period the Applicant shall annually provide the City of Passaic with proof of maintaining the Affordable Housing Unit as the Applicant's primary residency. Such proof must include item number one and two of items number two through seven listed below:

- (1) New Jersey Driver's License (photo identification) or government issued ID.
- (2) Elementary School, High School or College report card or transcript containing your address, issued within the past six months.
- (3) Property tax bill, statement or receipt for the current year.
- (4) Homeowner insurance declaration page for the current policy year.
- (5) Checking or saving account statement from a bank or credit union issued in the past 60 days.
- (6) Utility bills for telephone, cable or electricity or credit card bill issued in the past 60 days that shows the homeowner's name at the address of the house.
- (7) Any letter or correspondence (including tax bills) from the IRS or the state tax office in the last year.

I/We certify that, I/We have read the above Agreement and completely understand the contents, that all information I/We have provided to the City of Passaic is true and correct as of the date of the signing of this Agreement and I/We will comply with all requirements and provisions contained herein this Agreement.

This Agreement signed and dated in the City of Passaic, County of Passaic, and State of New Jersey on _____.

Signatures:

_____ Date _____

Applicant

_____ Date _____

Co-Applicant

_____ Date _____

Co-Applicant

_____ Date _____

Witness to the above

ATTEST:

CITY OF PASSAIC IN THE
COUNTY OF PASSAIC:

Amada D. Curling, City Clerk

Hector C. Lora, Mayor

STATE OF NEW JERSEY)
 |) SS:
COUNTY OF PASSAIC)

I CERTIFY that on _____, 201__, Amada D. Curling personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Municipal Clerk of THE CITY OF PASSAIC IN THE COUNTY OF PASSAIC, the Municipal Corporation named in the attached document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is Hector C. Lora, Mayor of the Municipal Corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Municipal Council;
- (d) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me
the date aforesaid

Notary Public

Amada D. Curling