

WASHINGTON STATE HOUSING FINANCE COMMISSION
HOMEBUYER RECAPTURE AGREEMENT

This Agreement regarding homebuyer assistance, dated as of _____ (the "Agreement"), is made and entered into by and between the Washington State Housing Finance Commission ("Commission") as subrecipient of funds provided by the City of Bellingham ("City"), a Whatcom County, Washington, municipal corporation; and _____, ("Borrower").

Property Address: _____

I. Definitions

- A. "Agreement" means a document to comply with the regulations at 24 CFR Section 92.254 and/or the City of Bellingham 2012 Housing Levy.
- B. "City Funds" means funds derived from the federal grants to the City under HOME, including program income as defined in HUD regulations for HOME; funds derived from the Community Development Block Grant program ("CDBG"), including program income as defined in HUD regulations for CDBG; and/or funds derived from the Bellingham 2012 Housing Levy ("Levy").
- C. "Deed of Trust" means a deed of trust securing a lien on the property.
- D. "Eligible Homebuyer" means
 - (i) any individual, or individual and his or her spouse/partner who currently do not own a home; and
 - (ii) who will reside in the purchased property as their primary residence who sign the Deed of Trust, related Promissory Note and other documents required for a Second Mortgage; and
 - (iii) who have completed a Homebuyer Education Program, completed the One-to-One Pre-Purchase Housing Counseling from an Approved Housing Counseling Agency and has scheduled and agreed to attend One-on-One Post-Purchase Housing Counseling; and
 - (iv) whose Household has an Annual Income (as of the date of signing the purchase agreement in the case of new home being constructed, or as of the date of purchase in the case of an existing home) that does not exceed the lesser of:
 - a. household income must be at, or under 80% of the Whatcom County area median income, adjusted for household size based on the WSHFC Tax Credit and Bond Financed properties limits.
 - b. the maximum income level permitted by federal regulations applicable to loans of HOME Funds for home buyer assistance or HOME income limits.
- E. "Household" means one or more persons occupying a housing unit.
- F. "HOME" means the federal HOME Investment Partnerships Act Program.
- G. "HOME Funds" means funds derived from the federal grants to the City under HOME, including program income as defined in HUD regulations for HOME.

- H. "HUD" means the United States Department of Housing and Urban Development or any successor to its functions.
- I. "Loan Documents" means, with respect to any loan, each original document evidencing or securing the loan (or any part thereof), and all documents incidental or collateral to the loan, including without limitation, the note or notes evidencing the loan, the deed of trust, each guarantee securing the loan, all applications, loan commitments, reports, security and loan agreements, disclosure statements, appraisals, loan settlement statements, title evidence, title insurance, hazard insurance, flood liability insurance, and all other insurance policies and any assignments thereof, correspondence applicable to the loan, and all other documents relating to the loan, all as the same may be amended, and all such documents or instruments subsequently executed and delivered.
- J. "Modest Housing" means housing with a purchase price that does not exceed 95% of the median value of owner-occupied homes as provided to the Commission from the City..
- K. "Net Proceeds" Net Proceeds shall be calculated as either:
 - 1. the gross sales price of the Property less any debt senior to this Loan; and actual and reasonable costs of sale paid by the Seller including; real estate commissions, real property excise tax paid by the Seller, escrow fees, recording fees, reasonable attorneys' fees, title insurance, and title insurance premiums, paid by the Seller; or, at the option of the Holder
 - 2. the value of the Property at the time of the Occurrence as determined by an appraiser chosen by Holder less any debt senior to this Loan; and actual and reasonable costs of sale paid by the Seller including, real property excise tax paid by the Seller, escrow fees, recording fees, reasonable attorneys' fees, title insurance, and title insurance premiums, paid by the Seller.

II. Agreement

This Agreement between the Commission and the Borrower identifies the requirements pursuant to the Agreement between the Commission and the City to provide down payment assistance to the Borrower to purchase a residence ("Home") within the City. The funds provided for the purchase of the Qualifying Home may be comprised of HOME Funds in an amount up to \$40,000.

Therefore, and as a condition to participation in that program Borrower makes the following additional covenants, representations and warranties:

A. Use of City Funds

- 1. City Funds as Loan. Borrower understands that the City Funds, including any HOME Funds, are provided as a loan. Specific loan terms are outlined in the Promissory Note and Deed of Trust.
- 2. Use of Loan Proceeds; Purchase Price. Borrower agrees that the City Funds shall be used solely to pay down payment or closing costs of a Home. Borrower represents and warrants that:

- a. Borrower is purchasing the Home in good faith for use as the principal residence of Borrower;
 - b. Borrower does not have any arrangement or understanding involving the intended resale, lease, or other transfer of the Home by Borrower; and
 - c. The total purchase price of the Home is \$_____ and does not exceed the maximum purchase price limit of \$285,475.
3. Deadline for Completion of Purchase and Occupancy. Borrower agrees that the Home purchase funded in part with City Funds be completed no later than 60 days after the date of this Agreement, and that the jurisdiction shall have no obligation to make any disbursement if the purchase is not completed by that date. Borrower shall occupy the Home as Borrower's principal residence no later than 60 days after the date of the Deed of Trust.

B. Affordability Restrictions

1. Affordability Period. Borrower understands the affordability period of this Recapture Agreement shall begin on the date of signing of this agreement and shall end ten years and thirty days from the date of recording the Deed of Trust.
2. Property Value. Borrower agrees that the value of the Home, as determined by appraisal completed not more than 60 days from the date of this agreement is \$_____.
3. Borrower Principal Residence. Borrower understands that funds are provided under a City down payment assistance program. Borrower understands the intent of the program is to provide assistance to the eligible homebuyers only so long as it is their principal residence, and no temporary or permanent sublease or rent is allowable, whether payment for such sublease or rent is received by the Borrower or not.
4. Recapture Provisions. Borrower agrees that if at any time during the Affordability Period the Home is not their principal residence or is transferred either through sale, foreclosure, or other event, that the Commission and the City, shall have the right to require Borrower to pay in full all amounts owed on the Promissory Note, on thirty (30) days' notice. This is known as recapture.
 - a. "Amount to be Recaptured." In the event of recapture, the Commission shall collect from Net Proceeds all City Funds loaned to the Borrower.
 - b. Amount to be Recaptured if Net Proceeds are Insufficient. In the event that Net Proceeds are insufficient to repay the City Funds, the amount to be recaptured shall be any funds remaining after payment of all senior non-City debt and closing costs. In no event shall the borrower be required to use funds other than net proceeds to repay the City Funds.

III. Additional Agreement

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and said person acknowledged that she signed this instrument as the _____ of the Washington State Housing Finance Commission, and acknowledged it to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Date: _____

Notary Public in and for the State of Washington,
residing at _____
My commission expires _____