

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM (“HOME”)



**HOMEBUYER DOWNPAYMENT AND
CLOSING COSTS ASSISTANCE NOTE
SECOND LIEN
("NOTE")**

HOME Contract # _____ Activity # _____

Date:

Property (which includes the real property and improvements thereon):

«Streetnbr» «streetname»

[Physical Property Address]

«CITY», «COUNTYCODE», Texas

[City] [County]

Property (Improvement) Type:

Manufactured or Mobile Home

[Enter one of the following property types in the space above: One-to-Four Unit Property/ Condominium Unit/ Cooperative or Mutual Housing Unit/ Manufactured or Mobile Home]

If Manufactured or Mobile Home (If not a Manufactured or Mobile Home, write N/A in each of the blanks):

«MOBILEHOMESERIAL», _____ «MH Model» «MH Year»

«MH Wind Zone»

[Serial #] [HUD Label #] [Make/Model] [Year Manufactured] [Wind Zone]

The Borrower(s) is/are «Mortgage first name» «mortgagorlastname» «Spouse».

The Borrower's mailing address is «Mortgagor_Mailing_Address»,
«Mortgagor_Mailing_City», «Mortgagor_Mailing_State» «Mortgagor_Mailing_Zip»

The Lender is the Texas Department of Housing and Community Affairs, a public an official agency of the State of Texas (“TDHCA”).

Lender's address is P. O. Box 13941, Austin, Texas 78711.

Contract: The above referenced HOME Contract # _____ between _____ (“Administrator”) and Texas Department of Housing and Community Affairs dated _____ in the amount of \$ _____ which provides homeownership opportunities to low income families through the use of homebuyer downpayment and closing costs assistance loans.

Deferred Principal is «LOANAMOUNT» Dollars (U.S. \$«Loanamount»).

Loan Term is ten (10) years from the date of this Note.

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U. S. \$«Loanamount» (this amount is called “Deferred Principal”) to the order of the Lender at the end of the Loan Term (“Maturity”). I understand that Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the “Note Holder.”

2. INTEREST

No interest will accrue on this loan at any time.

3. TIME AND PLACE OF PAYMENTS

Provided that the Borrower complies with the other terms of this Note, the amounts due and payable under this Note shall be deferred and repayable as follows:

Time Elapsed	
From signature date to first anniversary	100%
From first anniversary to second anniversary	90%
From second anniversary to third anniversary	80%
From third anniversary to fourth anniversary	70%
From fourth anniversary to fifth anniversary	60%
From fifth anniversary to sixth anniversary	50%
From sixth anniversary to seventh anniversary	40%
From seventh anniversary to eighth anniversary	30%
From eighth anniversary to ninth anniversary	20%
From ninth anniversary to tenth anniversary	10%
After tenth anniversary	0%

This unpaid or unforgiven balance of the Note shall be due and payable from the available Net Proceeds upon the occurrence of any of the events described in subsections (d) and (e) below. Net Proceeds of a sale are the sales price of Property minus the superior loan repayment (other than HOME funds) and any closing costs. If the Net

Proceeds are insufficient to repay the Note and Borrower's investment (which includes any portion of initial down payment paid by Borrower combined with the investment of any capital improvements made with Borrower's funds), the Borrower's investment is paid in full first from the available proceeds from the re-sale and the Note is repaid to the extent that proceeds are available. If there are no Net Proceeds, repayment of the Note is not required. Any Net Proceeds in excess of Borrower's investment and the amount to be repaid under the Note are paid to the seller of the Property.

If the unpaid or unforgiven balance of the Note is declared due and payable upon the occurrence of any of the events described in subsections (a), (b), (c) and (f) below, it shall be paid either in a single payment or, at Borrower's option, by execution and delivery of an unsecured note in the amount of the unpaid balance of the loan payable to Lender in monthly installments amortized over ten (10) years from the date of the note.

The events which will cause the balance of the Note to be declared due and payable before or at Maturity are as follows:

(a) the purchase money note to _____ dated _____ in the amount of \$ _____, hereinafter the First Lien Note ("FLN") is paid in full according to its terms; or

(b) the FLN is refinanced in whole or in part or is assumed by a new borrower without the consent of the Texas Department of Housing and Community Affairs ("TDHCA"); or

(c) the unpaid balance of the FLN becomes due and payable in full for any reason (whether by acceleration or according to its terms, and including, without limitation, because any maker of the FLN is in default); or

(d) all or any part of the Property, or any interest in it, is leased, transferred, or foreclosed, except that this clause (d) will not apply to:

(i) the creation of a lien subordinate to the Second Lien Deed of Trust securing this Homebuyer Downpayment and Closing Costs Assistance Note, or

(ii) a transfer (not upon death) between joint tenants in the Property who are also co-makers, of this Homebuyer Downpayment and Closing Costs Assistance Note, or

(iii) a transfer by devise, descent or operation of law upon the death of a joint tenant in the Property if at least one other joint tenant who is also a maker of the Homebuyer Downpayment and Closing Costs Assistance Note remains alive and continues to occupy the Property as his or her principal residence; or

(e) all or part of the Property is sold; or

(f) the Borrower ceases to occupy the Property as his or her principal residence.

I will make my payment(s) at Texas Department of Housing and Community Affairs, Attn: Loan Servicing, P. O. Box 13245 C-3, 332-05, Austin, Texas 78711-3245 or at a different place if required by the Note Holder.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Deferred Principal at any time before they are due. A payment of Deferred Principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of Deferred Principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Deferred Principal I owe under this Note or by making a direct payment to me. If a refund reduces Deferred Principal, the reduction will be treated as a partial prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Default: If I do not make the full amount of the payment on the date it is due, I will be in default. Additionally, I will be in default under this Homebuyer Downpayment and Closing Costs Assistance Note:

(i) if I fail to perform any obligation required of me under the Second Lien Deed of Trust securing this Homebuyer Downpayment and Closing Costs Assistance Note or take any action prohibited under the Second Lien Deed of Trust securing this Homebuyer Downpayment and Closing Costs Assistance Note,

(ii) if any representations made by me in connection with this loan was false in any material respect when made, or

(iii) if any default occurs under the FLN or under the Deed of Trust securing the FLN.

(B) Notice of Default: If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Deferred Principal which has not been

paid. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(C) No Waiver By Note Holder: Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(D) Payment of Note Holder's Costs and Expenses: If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. **GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Lender's address above or at a different address if I am given a notice of that different address.

8. **OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. **SUBORDINATION TO FIRST LIEN**

This Note is a second lien note, subject and subordinate in all respects to the lien, terms, covenants and conditions of the FLN and the deed of trust securing payment of said FLN. In the event of a foreclosure of the FLN, any provisions herein or in any collateral agreement restricting the use of the property to low or moderate income households shall have no effect on subsequent owners or purchasers of the property who are not related to me. I understand that any default under the FLN or the First Lien securing it will be a default under this Note.

10. **WAIVERS**

I and any other person who has obligations under this Note waive notice of intention to accelerate, except as provided in Section 6(B) above, and the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. This Note is secured by the liens and security interests granted in the Second Lien Deed of Trust (the "Security Instrument"), dated the same date as this Note, from Borrower to Michael Gerber, Trustee, for the benefit of Lender, upon and against the Property described above. In addition to the protections given to the Note Holder under this Note, the Security Instrument protects the Note Holder from possible losses which might result if Borrower does not keep the promises which Borrower makes in this Note. That Security Instrument describes how and under what conditions Borrower may be required to make immediate payment in full of all amounts Borrower owes under this Note. Some of those conditions are described as follow:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal or state law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

Witness the Hand and Seal(s) of the Undersigned:

_____	_____	_____	_____
Borrower	Date	Borrower	Date
_____	_____	_____	_____
Borrower	Date	Borrower	Date

