

City of Nashua
Urban Programs Department
229 Main Street
PO Box 2019
Nashua, NH 03060

**HOME Investment Partnership Program
Affordable Housing Restriction
Homebuyer Assistance Program**

THIS AGREEMENT made on this _____ day of _____ 202X, by and between the City of Nashua, a municipal corporation organized and existing under the laws of the State of New Hampshire (hereafter the “City”) whose address is City Hall, 229 Main Street, Nashua, NH 03060, and _____ (hereafter the “Buyer”), who shall occupy [address], Nashua, New Hampshire 0306X.

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) awards funds, by formula allocation, to the City as a Participating Jurisdiction of the HOME Investment Partnerships Program (HOME) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended; and

WHEREAS, the City’s must impose its HOME Resale Policy when an affordable housing subsidy is granted.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the Buyer, for itself, its successors or assigns, makes the following covenants as to the use of the Project and hereto agrees as follows:

1. Amount of Assistance: The Buyer acknowledges receipt of HOME assistance in the amount of \$XX,000 which was provided as homebuyer assistance toward the [down payment, closing costs, interest rate buy-down, and/or purchase price of the home] through the aforementioned Agreement between the City and the Buyer.
2. Affordability Period: For the first five (5) years following project completion (hereinafter referred to the “Affordability Period”), the following restrictions shall apply. Project completion is the date that project has been completed in HUD’s Integrated Disbursement and Information System (IDIS). Project completion in IDIS cannot occur until after occupancy and household data is known. Once determined, the City will provide, in writing, the start and end date of the Affordability Period.
3. Deed Restriction: The Buyer intends, declares and covenants, on behalf of itself and its successors and assigns, that the covenants and restrictions set forth in this Agreement

regulating and restricting the use and occupancy of the premises (i) shall be and are covenants running with the premises, encumbering the premises for a term five (5) years from the project completion date, binding upon the Buyer's successors in title and all subsequent owners of the premises, (ii) are not merely personal covenants of the Buyer, and (iii) shall bind the Buyer and its successors and assigns.

4. Principal Residence: The Buyer must occupy the property as their principal residence for the duration of the Affordability Period. Temporary subleases will not be allowed (exceptions can be made for military families).
5. Resale Requirement: The City's resale provisions, applicable to this Project, are as follows:
 - a. If the housing is transferred, voluntarily or otherwise, during the Period of Affordability, it must be made available for subsequent purchase *only* to a buyer whose household qualifies as low-income or moderate-income and will use the property as its principal residence.
 - b. The price at resale must provide the original HOME-assisted Buyer a fair return on investment and ensure that the housing will remain affordable to a reasonable range of low-income and/or moderate-income homebuyers.
 - (i) Affordable to a reasonable range of low-income and moderate-income buyers means that the principle, interest, taxes and insurance (PITI) shall not exceed 30% of gross income for buyers between 0-80% of the current area median income.
 - (ii) In some cases, it may be necessary for the City to provide HOME assistance to the subsequent homebuyer to ensure that the original homebuyer receives a fair return and the unit is affordable to the defined low-income/moderate-income population. The resale price cannot be set based upon what is affordable to a *specific* homebuyer.
 - (iii) "*Fair Return to Initial Buyer*" is defined as the return of the initial homeowner's original investment (i.e., down payment) plus the cost of eligible capital improvements. The fair return will only apply to sales within the HOME Affordability Period.

It is important to note that in certain circumstances, such as a declining housing market where home values are depreciating, the original homebuyer may not receive a return on his or her investment because the home sold for less or the same price as the original purchase price.

EXAMPLE – DECLINING MARKET

A homebuyer put a \$5,000 down payment on a \$150,000 home. One year later the homeowner invested \$9,000 in kitchen improvements. The original homebuyer decides to sell the home three years later.

Since the original homebuyer purchased the home four years ago, the local housing market has declined significantly. The fair market value of the home is now \$140,000. Because there is a \$10,000 loss on the sale, it is not possible to provide the original homebuyer's \$14,000 investment (\$5,000 + \$9,000).

- (iv) Capital improvements made by the original homebuyer must be supported by receipts/contracts/cashed checks or other proof of payment. All work must have

been conducted in accordance with state and local building codes. If a permit was required for the work, it must be on file and have been approved by the City of Nashua Building Department. If the owner does not have proof of payment or work was conducted without local approvals, it will not be included in the Fair Return calculation.

Eligible capital improvements include:

- Energy upgrades such as solar hot water system, heating system or increased insulation
- Replacement of kitchen or bathroom
- Kitchen modernization
- Addition of driveway, sprinkler systems, retaining walls or fence

Excluded work includes:

- Maintenance costs
- Cosmetic improvements, such as paint, wallpaper, landscaping, lighting, etc.

- (v) The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of a Federal Housing Administration-insured mortgage to HUD. The City may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event obtains an ownership interest in the housing.
6. If the Buyer or successive owner defaults in the performance or observance of any covenant, agreement or obligation set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by the City (or for a period of sixty (60) days after such notice if such default is curable but requires acts to be done or conditions to be remedied which, by their nature, cannot be done or remedied within such 30-day period, and if the Buyer or successive owner commences same within such 30-day period and thereafter diligently and continuously pursues the same to completion within such 60-day period), then the City may declare that the Buyer or successive owner is in default hereunder and may take any one or more of the following steps, at its option:
- a. By suit, action or proceeding at law or in equity, require the Buyer or successive owner to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of the City hereunder, or obtain damages caused to the City by any such default;
 - b. Declare a default under this Homebuyer Assistance Program Agreement and make no further disbursements of grant/loan proceeds, and demand immediate repayment from the Buyer or successive owner of grant/loan proceeds previously disbursed to the Buyer and/or successive owner; and
 - c. Take whatever other action at law or in equity may appear necessary or desirable to enforce the obligations, covenants and agreements of the Buyer or successive owners hereunder and under the HOME Agreement, including the recovery of grant/loan proceeds.

7. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the City to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.
8. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.
9. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.
10. All of the rights and obligations set forth herein shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns.

~~~~~ Signatures follow next page ~~~~~

**IN WITNESS HERETO**, the parties herein have caused this agreement to be executed at the place and on the day specified hereinabove.

**BUYER**

\_\_\_\_\_  
[Name of Homebuyer #1]

\_\_\_\_\_  
[Name of Homebuyer #2, if applicable]

State of New Hampshire  
Hillsborough County

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 202X, by [Name of Homebuyer #1 and, if applicable, Homebuyer #2].

NOTARY PUBLIC  
State of New Hampshire

\_\_\_\_\_  
My commission expires:

**CITY OF NASHUA**

By: \_\_\_\_\_  
Mayor, City of Nashua

State of New Hampshire  
Hillsborough County

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 202X, by \_\_\_\_\_, Mayor of the City of Nashua, and on behalf of the City of Nashua, who is personally known to me.

NOTARY PUBLIC  
State of New Hampshire

\_\_\_\_\_  
My commission expires: