



CITY OF CHARLOTTE
Housing & Neighborhood Services
600 E Trade St
Charlotte, North Carolina 28202

Queen City Accessory Dwelling Unit Program Loan Agreement

Between

Borrower

and

The City of Charlotte

This Loan Agreement (the "Agreement") is made as of Insert Date, by and between Borrower (the "Borrower" whether singular or plural) and the City of Charlotte, a municipal corporation (the "City"):

WITNESSETH:

WHEREAS, Borrower has made an application for a Queen City Accessory Dwelling Unit Loan on the property known as Property (the "Property"), which application has been considered and processed by the Housing & Neighborhood Services Department and found to be satisfactory; and

WHEREAS, the City has agreed to make a loan to Borrower using PAYGO Funds for the construction of an Accessory Dwelling Unit (the "Unit") under the Queen City Accessory Dwelling Unit Program (the "Program") provided that Borrower faithfully complies with every term and provision of this Agreement and of the other security documents hereinafter incorporated in this Agreement by reference;

NOW, THEREFORE, to induce the City to make a loan to Borrower in the amount herein agreed upon and to establish the mutual agreement and obligations of the parties, the City and the Borrower agree each with the other as follows:

A. LOAN AND REPAYMENT.

1. The City shall lend Borrower the sum of up to \$Loan (the "Loan"). All Loan funds will be available for the development of the Unit on the Property. The Loan shall be used for the sole purposes of (i) making payments to the contractor approved by the City to develop the Property, and (ii) paying for Loan costs. In the event any portion of the Loan proceeds remain after payment of the items listed above, such amount shall be paid to the City to

reduce the principal amount of the Loan. In no event shall Borrower receive any portion of the Loan proceeds in cash.

2. Borrower has engaged a general contractor to complete construction of the ADU (the "Contractor"). The Contractor has provided an estimate to Borrower and City detailing the estimated cost to construct the ADU. The City shall disburse the proceeds of the City Loan according to the following schedule:
 - i. 1/4th of the loan amount at 25% construction completion and upon the recordation of the Deed Restrictions (as defined below), with the Mecklenburg County Register of Deeds Office;
 - ii. 1/4th of the loan amount at 50% construction completion;
 - iii. 1/4th of the loan amount at 75% construction completion; and
 - iv. The remaining balance of the loan proceeds upon receipt of the certificate of occupancy for the ADU.

Each disbursement shall be subject to a satisfactory inspection by the City and receipt of all necessary documentation from the Contractor certifying to the City that the requisite percentage of construction has been completed, in accordance with applicable requirements of all governmental authorities and substantially in accordance with the plans and specifications.

3. The Loan shall not accrue interest. The loan will be forgiven on [DATE] (the "Maturity Date").
4. The Loan shall be forgivable so long as the Borrower continues to reside at and own the Property. The balance of the Loan shall be discounted and reduced by \$10,000 per year beginning on the first anniversary date of the Note until the termination of the Affordability Period (as defined below). However, the entire loan amount shall be immediately due and payable upon any of the following events:
 - i. The sale, transfer, conveyance, devise, gift, or other disposition of the Property during the Affordability Period, other than under an exercise of eminent domain or as previously approved by the City or allowed under the terms of this Agreement;
 - ii. The failure of Borrower(s) to use the Unit as a rental property in compliance with the terms of this Agreement;
 - iii. At the option of the City, the death of Borrower; or

- iv. Default under the Note (defined below), this Agreement, the Deed Restrictions or the Program
- 5. Borrower may repay the Loan, in whole or in part, at any time during the term of the Loan without penalty or premium, however, the Property will remain subject to the Deed Restrictions until the termination of the Affordability Period.

B. SECURITY.

The Loan shall be evidenced by one or more promissory notes (collectively, the "Note"), payable to the order of the City and containing the repayment provisions set out in this Agreement, duly executed by Borrower, and deed restrictions duly executed by Borrower providing for certain affordability restrictions applicable to the ADU (the "Deed Restrictions").

C. SECURITY DOCUMENTS.

The Security Documents will consist of the following:

- 1. One or more Promissory Notes (herein collectively referred to as "Note") with Borrower and the City;
- 2. Loan Agreement; and
- 3. Declaration of Deed Restrictions on the Property to be recorded in the County records and enumerating the affordability requirements and Affordability Period.

D. BORROWER'S CERTIFICATIONS, REPRESENTATIONS, AND WARRANTIES.

The following are the agreements of Borrower with and for the benefit of the City:

- 1. Prior to the disbursement of any Loan funds by the City, Borrower shall submit the Property to the restrictions referenced in Section C.4. above and E. below.
- 2. Borrower has accepted, and now confirms the Borrower's acceptance of the Loan, agrees to be bound by the terms thereof, and agrees to execute and deliver to the City all security documents contemplated by this Agreement whether or not specifically enumerated herein.
- 3. Borrower shall procure prompt delivery to the City of all security documents, properly prepared, in full compliance with all of the City's requirements relative thereto, and executed and recorded where necessary. Borrower acknowledges that the City shall not be obligated to fund the Loan until such time as Borrower has delivered to the City the

Security Documents in a form satisfactory to the City and such other documents as the City may require, and until such Security Documents required to be recorded have been so recorded in the Office of the Register of Deeds for the County in which the Property is situated.

4. Borrower will comply with all Federal requirements of Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 as amended in 1974 to not discriminate upon the basis of race, sex, color, creed, or national origin in the sale, lease, rental, use or occupancy of the Property.
5. Borrower shall use the Loan proceeds only to pay for costs of services and materials necessary to carry out the construction work for which the Loan is approved and for no other purpose.
6. Borrower shall not interfere with the Contractor or construction with the intent to disrupt or delay construction of the Unit.
7. Borrower shall permit inspection by the City or its designee of the Unit, to inspect the construction work, and/or contracts, materials, equipment, payrolls, and conditions of employment pertaining to the work.
8. Borrower shall provide the certificate of occupancy for the Unit to the City. Borrower and Property Manager shall provide the City with the tenant's income verification documents and a copy of the signed lease. Borrower shall keep such records as may be required by the City with respect to the construction work.
9. Borrower shall not pay any bonus, commission, or fee for the purpose of obtaining the City's approval of the loan application, or any other approval or concurrence required by the City or its designee to complete the construction work, financed in whole or in part, with the Loan.
10. Borrower shall not allow any member of the governing body of the City who exercises any functions or responsibilities in connection with the Loan to have any interest, direct or indirect, in proceeds of the Loan, or in any contract entered into by the Borrower for the performance of work financed, in whole or in part, with the proceeds of the Loan.
11. Borrower shall abstain from and will not permit the commission of waste in or about the Unit, shall maintain the Unit in good condition and repair, reasonable wear and tear excepted, and will permit the City, or its designee, to inspect the Unit during the term of the Loan.

12. Borrower shall maintain and provide to the City copies of the following insurance policies on the Property from a company and in an amount satisfactory to the City:
 - i. General accident and public liability insurance against all claims for bodily injury, death, or property damage occurring upon, in, or about any part of the Property.
 - ii. At such time as construction of the Unit has commenced, an "all-risk" permanent insurance policy in an amount no less than the replacement cost of the Unit with provisions requiring the insurance company to provide a minimum 30-day advance written notice to the City of any intended policy cancellation or non-renewal and designating the City as an additional insured.
 - iii. Rent Loss insurance that keeps the rental value of the Unit insured against loss or damage by fire and such other insurable risks, casualties, and hazards as the City may from time to time specify.

In the event of Unit loss, Borrower shall give prompt notice thereof to the insurance carrier and the City, and the City may make proof of loss if not made promptly by Borrower. The City is hereby authorized, in its sole discretion, to adjust, compromise and collect the proceeds of any insurance claims, up to the amount of the outstanding balance of the Loan.

Borrower hereby assigns the proceeds of any such insurance policies to the City and hereby directs and authorizes each insurance company to make payment for such loss directly to the City. All insurance proceeds shall be applied to the outstanding balance of the Loan or, in the City's sole discretion, to the restoration or repair of the casualty damage. Notwithstanding the foregoing, if the Loan is not in default and if the City, in the City's reasonable judgment, determines that there are sufficient funds available (through insurance proceeds and contributions by Borrower) to restore or repair the Unit to a condition at least as equal to the condition thereof as existed prior to the casualty damage, the City shall apply any sums received by it under this Section for the restoration or repair. Should an event of casualty or less render the Unit unfit for occupancy and should the City elect not to repair, replace, or restore the Unit to a condition fit for occupancy, this Agreement and the Note shall terminate, and the City shall promptly record a termination of the Deed Restrictions.

13. With respect to the Unit, Borrower agrees to comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4826) and any HUD regulations issued pursuant thereto, as such regulations exist on the date of execution of this Agreement by the Borrower.
14. Other than the lease of the Unit to a low income individual or family pursuant to this Agreement, Borrower shall not sell, lease (in the case where Borrower is also a lessee), or transfer the Property without repaying the entire Loan unless prior written consent of the City is sought and received.
15. Borrower shall allow for the maintenance of the structural condition of the Unit in compliance with the requirements of the Property Rehabilitation and/or Building Standards and the City's minimum housing code.
16. After the completion of the construction work for which this Loan is approved, the initial occupant or occupants of the Unit shall belong to a household with income that is 80% or less than AMI.

E. **RESTRICTIONS.**

Upon the execution of this Agreement, and for _____ (___) years following the commencement of Borrower's first lease to a tenant pursuant to the Program and the terms of this Agreement (the "Affordability Period"), the Unit shall be subject to compliance with the Program and the Program Guidelines, and shall be subject to the following restrictions:

- 1) Unit must be rented to families with incomes that are less than or equal to 80% of the Mecklenburg County, North Carolina Area Median Income ("AMI"). If the income of the tenant of the Unit increases above 80% of AMI, the tenant shall be considered over-income ("Over-Income Tenant") and no longer compliant with the Program. Upon the expiration of the lease to the Over-Income Tenant, the Unit must be rented to an individual or family with an income that is less than or equal to 80% AMI.
- 2) If the Property is sold, transferred, or conveyed prior to the end of the Affordability Period, (except as otherwise permitted under any other provision of the Security Documents) the Borrower must pay the City back the full balance of the loan plus 3% interest.
- 3) The rent increase for the Unit may not exceed 3% per year.
- 4) The Borrower may not disqualify a prospective tenant because of the tenant's lawful source of income.

5) Borrower covenants and warrants that its use, maintenance, and rental of the Unit shall comply with all applicable laws, rules, and regulations of the state, local and federal governments, and all amendments thereto (collectively, "Laws") and all applicable sections of the City of Charlotte's Code of Ordinances ("Codes").

6) Loan shall be repayable in full in the event of any sale of the Property to a third party (except as otherwise permitted under any other provision of the Security Documents).

F. **AGREEMENTS OF THE CITY.**

If the Borrower is in compliance with all agreements as provided herein and in the Deed Restrictions and any other security documents, the City will lend to Borrower the principal sum set out in this Agreement.

G. **MUTUAL COVENANTS.**

The following are the mutual agreements and covenants of the parties:

1. No waiver by the City of any default on the part of Borrower shall be considered a waiver of any other or subsequent default, and no delay or omission exercising or enforcing the rights and powers of the City shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder by the City shall be held to exhaust such rights and powers, and each such right or power may be exercised from time to time by the City.
2. The Note, Deed Restrictions and any other security documents, when prepared and approved by the City, shall be and are hereby incorporated in this Agreement by reference to the extent that the same are not in conflict with specific terms and conditions of this Agreement. The Note and Deed of Trust provided for herein shall specifically incorporate this Agreement by reference.
3. This Agreement shall be binding upon the City, its successors and assigns, and upon Borrower and the representative, heirs, successors, and assigns of Borrower.
4. The City shall have the right, but not the obligation to disburse the proceeds of the Loan directly to any contractor or to any person performing labor or services or delivering material to the Property, and to that end, Borrower hereby constitutes and appoints the City as Borrower's attorney-in-fact to make such disbursements and to accept receipts therefor on behalf of Borrower. Additionally, Borrower appoints the City as its agent to

exercise on behalf of Borrower all rights Borrower may have against any contractor including, but not limited to, collection of any sums due for failure to complete the construction work within the time required under the contract between Borrower and any contractor. All such appointments of the City to act as attorney-in-fact shall be coupled with an interest. This appointment shall not impose upon the City any obligation to exercise any of the Borrower's rights.

5. Borrower and the City agree that any sums recovered from any contractor for defective work shall be applied to remedy said defective work. Any sums recoverable from any contractor for delay in completion shall, in the City's sole discretion, either be paid to Borrower or applied as a credit against the principal balance of the Loan.
6. The City shall not be liable to the Borrower for any act or omission of any person with whom the Borrower contracts to perform the construction work for which this Loan is approved. Any attempt by the Borrower to hold the City liable for any such act or omission by any such contractor shall constitute a breach of this Agreement and a default by the Borrower.

H. **EVENT OF DEFAULT.**

Borrower hereby acknowledges that (1) the identity and financial circumstances of Borrower were and continue to be material circumstances upon which City has relied in connection with, and which constitute valuable consideration to City for, the extending to Borrower of the Loan evidenced by this Agreement, and (2) any change in such identity or financial circumstances could materially impair or jeopardize the security for the payment of the Note granted to the City herewith. Therefore, any one or more of the following events shall constitute a default by the Borrower under the terms of this Agreement:

1. The sale, transfer, conveyance, mortgaging, encumbrance, lease, or other disposition of the Property or any part thereof, or any interest therein, or the receipt of subordinate financing secured by the Property during the term of the Loan, without the prior written consent of the City or as otherwise permitted under any other provision of the Security Documents. Notwithstanding the foregoing, it shall not be an event of default if the property is transferred to the Borrower's lawful heirs in the event of the Borrower's death, so long as the Borrower's heirs agree to be bound by the terms of this Agreement and continue to own the Property throughout the Term of this Agreement.

2. The failure of Borrower to fully perform, or cause to be fully performed, within the time or times stipulated for such full performance, any of Borrower's undertakings and agreements set out in the Note, the Deed Restrictions, or any other security document or this Agreement, subject to any applicable grace or cure periods.
3. The happening of any event or occurrence (whether within or without the control of Borrower) if the happening of such event or occurrence is prohibited by the terms and provisions of the Deed Restrictions, any other security document, or this Agreement, subject to any applicable grace or cure periods.
4. Borrower's bankruptcy, insolvency, or assignment for the benefit of creditors which is not discharged within sixty (60) days of filing.
5. Borrower's material misrepresentation to the City of any fact, circumstance, or opinion.
6. Borrower's illegal use of the Unit including, but not limited to, the violation of any criminal law of the State of North Carolina or the United States of America on the Property.
7. The proper filing of any claim of lien against the Property, or any part thereof, or any interest or right appurtenant thereto, without discharge or satisfaction thereof or provision, made therefor that is satisfactory to the City, provided that Borrower shall have thirty (30) days from the filing of a claim of lien to cause such claim of lien to be removed or discharged.

In the event of a default by the Borrower, the remedies available to the City shall be as set forth in Section I of this Agreement.

I. **THE CITY'S REMEDIES.**

In the event of the occurrence of any event of default (provided that Borrower has been provided at least thirty (30) days' prior written notice (or such other longer period of time as may be set forth elsewhere in this Agreement) of such event of default and such event of default remains uncured), the City shall, in addition to all other remedies as may be provided by law or by any other Loan document, be entitled to the following rights and remedies:

1. Upon default by Borrower, the entire principal balance of the Loan plus 3% interest shall, at the option of the City and without notice to Borrower, become immediately due and payable.

2. Effective upon an uncured default by Borrower, Borrower hereby assigns to the City (without limiting in any manner any other assignment thereof previously or contemporaneously made by Borrower to the City) all of Borrower's interest in this Agreement and under the contract relating to construction on the Property, but this assignment shall not, in the absence of affirmative written ratification by the City, be deemed to impose upon the City any of Borrower's obligations under this Agreement or under any contracts with contractors. Borrower hereby constitutes and appoints the City its true and lawful attorney-in-fact, with full power of substitution in the Property to complete construction in the name of Borrower. Borrower hereby empowers said attorney-in-fact as follows:
- i. To use any Loan funds of Borrower, including any funds which may remain undisbursed hereunder, for the purpose of completing construction of the Unit as determined by the City;
 - ii. To employ such contractors, subcontractors, agents, architects, and inspectors as shall be required for said purposes;
 - iii. To pay, settle, or compromise all existing and undisputed bills and claims which may be liens against the Property, or as may be necessary or desirable, in the sole discretion of the City, for the completion of construction or the clearance of title;
 - iv. To take over and use all or any part of the labor, materials, supplies, and equipment contracted for or purchased for purposes of construction of the Unit, whether or not previously incorporated into the Unit;
 - v. To execute all applications and certificates in the name of Borrower and to do any and every act with respect to construction which Borrower might do on their own behalf, including, without limitation, execution, acknowledgment, and delivery of all instruments, documents, and papers in the name of Borrower as may be necessary or desirable, in the sole discretion of the City. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. All sums so expended by the City, pursuant to this Agreement shall be deemed to have been disbursed to Borrower and secured by the Deed of Trust and all other Loan documents and shall be deemed a necessary expenditure for the preservation of the City's security.

Notwithstanding any event of Borrower's default and the City's exercise of any remedy whether by law or as set forth in this Agreement, the City shall have no liability for failure to lease the Unit or collect any rents due, provided that the City uses reasonable efforts to continue leasing the Unit and otherwise mitigate its damages resulting from Borrower's default.

All remedies of the City provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided or available at law or in equity. The exercise of any right or remedy by the City hereunder shall not in any way constitute a cure or waiver of default hereunder or under the Note, the Deed of Trust, or any applicable Loan document, or invalidate any act done pursuant to any notice of default, or prejudice the City in the exercise of any of its rights hereunder or under the Note, the Deed of Trust, or any applicable Loan document.

J. **NOTICES AND DEMANDS.**

A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by (i) nationally recognized overnight delivery service providing proof of delivery, (ii) certified mail, postage prepaid, return receipt requested, or (iii) delivered personally, and

1. In the case of the Borrower, is addressed to or delivered personally to the Borrower at:

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| <div style="border: 1px solid black; display: inline-block; padding: 2px 10px;">NameAddress</div> <div style="border: 1px solid black; display: inline-block; padding: 2px 10px;">City, State, ZIP code</div> |
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2. In the case of the City, is addressed to or delivered personally to:

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| Director Housing & Neighborhood Services City of Charlotte 600 East Trade Street Charlotte, North Carolina 28202-2859 |
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or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided herein.

IN WITNESS WHEREOF, the City and Borrower have caused this Agreement to be executed as of the day and year above written.

THE CITY OF CHARLOTTE:

(SEAL)

BORROWER:

(SEAL)

SAMPLE