

SoftSecond™ Loan Program  
III-4. Subsidy Agreement

Bank: \_\_\_\_\_

Borrower(s): \_\_\_\_\_  
\_\_\_\_\_

Provider: The Massachusetts Housing Partnership Fund Board (MHP Fund).

THIS AGREEMENT is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ be-  
tween the Bank and the Provider, as identified above, in the following circumstances:

1. The Bank has agreed to loan funds to the Borrower as evidenced by two notes of even date herewith (the "First Note" and the "Second Note," respectively) and as secured by mortgages of even date herewith (the "First Mortgage" and the "Second Mortgage," respectively) on the property located at \_\_\_\_\_, Massachusetts (the "Property").
2. The Borrower seeks to obtain a reduction in the monthly payment amount due the Bank under the Second Note for the first nine years of the loan.
3. The Provider has agreed to deposit funds with the Bank to subsidize certain monthly payments on the Second Note payable by the Borrower to the Bank.
4. The Borrower has executed a third note of even date herewith (the "Soft Second Subsidy Note") payable to the Provider and a third mortgage of even date herewith (the "Soft Second Subsidy Mortgage") to secure its obligations under the Soft Second Subsidy Note.
5. The Borrower agrees and acknowledges that the Provider has relied upon the truth and accuracy of the information contained in the Borrower's loan application and in the other documents and information submitted by the Borrower to the Bank (the "Financial Information") in making the interest subsidy loan to the Borrower reflected by the SoftSecond Subsidy Note and the SoftSecond Subsidy Mortgage.
6. The Borrower agrees and acknowledges, as further set forth in Paragraph 7 below, that if the Financial Information is proved to be false when given in any material respect, the Provider may demand immediate payment in full by the Borrower of the entire amount which has been applied by the Bank as a Subsidy Payment to the Borrower's obligation on the Second Note.

NOW, THEREFORE, the Bank and the Provider agree as follows:

1. The sum of \_\_\_\_\_ dollars (\$) is deposited by the Provider with the Bank, the receipt of which is hereby acknowledged, which sum of money (the Account") will be held in accordance with the terms of this Agreement. The Bank and the Provider and the Borrower agree that the Account represents the amount required to fund the "Subsidy Payment" on the Second Mortgage Payment Subsidy Schedule, attached hereto and incorporated herein (the "Schedule") discounted to represent the present value of the funds to be used over the first nine years of the term of the

## Second Note.

2. The Bank will apply the funds from the Account each month to enable the Borrower to reduce its payments under the Second Note by the amount specified as "Subsidy Payment" on the Schedule.
3. Notwithstanding the payment provisions contained in the Second Note, the Borrower shall, during the term of this Agreement, make the payment shown as "Borrower Payment" on the Schedule, for the corresponding payments.
4. The Bank will apply the monthly Subsidy Payment to the Borrower's obligation only upon receipt of the Borrower's monthly payment.
5. This Agreement shall not affect the Borrower's obligation to pay the Bank any monthly escrow payments for insurance, taxes or similar charges, or the amount thereof, pursuant to the First Note and First Mortgage and the Second Note and Second Mortgage.
6. If the Bank's interest in the Second Note is assigned or sold, the Bank may, at its option, (1) retain the Account and apply the payment monthly as provided herein, or (2) assign the Account to the subsequent holder of the Second Note; provided however that any such assignment shall not further modify the payment amounts provided in this Agreement, and provided further that any such assignee of the Account agrees to execute such additional documents as may be required by the Provider.
7. In the event that the Borrower sells the Property before the fifth anniversary of the loan, unless the Borrower is given a written waiver by the Provider, the Borrower shall repay the Provider the entire amount which has been applied by the Bank as Subsidy Payment to the Borrower's obligation on the Second Note, as specified in the Schedule. In no event, however, shall this amount, when combined with the total amount of debt secured by the First Mortgage and the Second Mortgage, cause the secured debt on the Property to exceed then applicable Fannie Mae loan to value requirements. Under current requirements, the total secured debt on the Property cannot exceed 97% of the value of the Property. In the event that the Borrower sells the Property after the fifth anniversary of the loan, the Borrower shall repay the Provider the lesser of 1) the amount of Subsidy Payment that has been applied to the Borrower's obligation on the Second Note or 2) twenty (20%) percent of the net appreciation realized from the sale or transfer of the Property or 3) the applicable amount under number 1 or 2 above, as adjusted, if necessary, to reflect Fannie Mae requirements. For purposes of this Soft Second Subsidy Agreement, the phrase "net appreciation" shall refer to the positive difference between the resale price and the purchase price of the Property (less appraisal costs and broker's fees), based on good faith, arm's length transactions. In the event that twenty (20%) percent of the net appreciation is not greater than the amount of Subsidy Payment that has been applied to the Borrower's obligation on the Second Note as stated above, the Borrower must provide to the Provider, at the Borrower's cost, a professional real estate appraisal to support the resale price. The Provider, reserves the right to base the calculation of net appreciation for purposes of this paragraph on the appraised value.
  - (a) In the event that information pertaining to the Borrower's income, household size and household income, assets and liabilities contained in the loan application or otherwise, and/or any other information furnished by the Borrower the Bank reflecting the Borrower's financial condition, is proved to be false in any material respect when given, the Provider may make demand upon the Borrower for the immediate payment in full to the Provider of the entire amount which has been applied by the Bank as a Subsidy Payment to the Borrower's obligation on the Second Note. Additionally, the Provider

may exercise its rights under the Soft Second Subsidy Mortgage to collect such obligations, including, without limitations, an act to foreclose on said Mortgage.

8. This Agreement will be terminated and the Bank and the Provider released from their obligations under it upon the occurrence of any of the following events:

- (a) The payment by the Borrower of all of the Borrower's payments on the Second Note contemplated by the Schedule;
- (b) The Second Note being prepaid in full prior to the final payment contemplated hereunder, in which case the balance of the Account, if any, will be paid to the Provider by the Bank. For purposes of this Agreement, the phrase "the balance of the Account" shall refer to the amount of funds, if any, actually deposited by the Provider with the Bank not applied by the Bank to the Subsidy Payments on the Schedule;
- (c) The foreclosure sale of the Second Mortgage, or deed in lieu of foreclosure, in which case the balance of the Account, if any, will be paid to the Provider by the Bank;
- (d) The sale or transfer of the Property by the Borrower, in which case the balance of the Account, if any, will be paid to the Provider by the Bank;
- (e) The foreclosure sale of the Subsidy Mortgage, in which case the balance of the Account, if any, will be paid to the Provider by the Bank.

9. The Borrower's obligations under the Second Note and Second Mortgage, the Soft Second Subsidy Note and Soft Second Subsidy Mortgage, and under this Agreement may not be transferred, assigned, or assumed without the written consent of the Bank and the Provider. If the Property is sold or transferred and the Second Note and Second Mortgage are assumed with the consent of the Bank, the balance of the Account, if any, will be paid to the Provider by the Bank, unless the Bank is directed in writing otherwise by the Provider.

10. Except as stated in the Soft Second Loan Program Agreement there are no other terms, agreements or understandings, expressed or implied, concerning the Account.

11. This Agreement shall be binding on and inure to the benefit of the heirs, successors and assigns of the parties to this Agreement.

12. This Agreement shall be governed by the law of the Commonwealth of Massachusetts. In case any one or more of the provisions in this Agreement are invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected thereby.

13. Any notice required under this Agreement shall be delivered or mailed, certified mail, to the Provider at the Massachusetts Housing Partnership Fund, 160 Federal Street, 2nd floor, Boston, MA 02110, to the Bank at \_\_\_\_\_ and to the Borrower at the address of the Property.

14. This Agreement may be amended only by a written instrument executed by all of the parties hereto.

BANK:  
BY:

\_\_\_\_\_  
Name

Its: \_\_\_\_\_

Acknowledged by:

BORROWER:

BY:

\_\_\_\_\_  
Name

Its: \_\_\_\_\_

PROVIDER  
BY:

\_\_\_\_\_  
Name

Its: \_\_\_\_\_

SECOND MORTGAGE PAYMENT SUBSIDY SCHEDULE

Year	Borrower Payment	Monthly Subsidy Payment	Monthly Payment
Year 1			\$
Year 2			\$
Year 3			\$
Year 4			\$
Year 5			\$
Year 6			\$
Year 7			\$
Year 8			\$
Year 9			\$
Year 10			\$
Year 11-30			\$

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