

When recorded, return to:
Town of Payson
Attn: Bethany Beck
303 North Beeline Highway
Payson, AZ 85541

DEFERRED PAYMENT LOAN AGREEMENT

This Agreement ("Agreement") is made and entered into effective this ____ day of _____ 2007, by and between _____, ("Applicant") and the Town of Payson, an Arizona municipal corporation ("Town").

WHEREAS, the Town, by and through the Community Development Department, has made available through the Community Development Block Grant Fund or HOME program certain funds to be administered as Deferred Payment Loans ("Loan"); and

WHEREAS, the Town provides this Loan for low to moderate income individuals for the purpose of rehabilitating real property within the Town; and

WHEREAS, the Applicant has applied for this Loan; and

WHEREAS, the Town, having reviewed the Applicant's application, has determined that the Applicant qualifies for this particular financial assistance,

NOW THEREFORE, in consideration of the foregoing premises and mutual covenants and promises contained herein, the parties agree as follows:

1. Deferred Payment Loan. The Town agrees to provide a Loan to Applicant in the amount of \$ _____ which Applicant shall use to satisfy obligations the Applicant has incurred under the Rehabilitation Project Contract in Case Number _____ between Applicant and (Contractor's Name), said agreement providing for rehabilitation or improvements on the following described real property ("Subject Property"):

INSERT LEGAL DESCRIPTION HERE

2. Interest Rate. The Promissory Note that accompanies this Agreement ("Note"), it is made at no interest.

3. Payment Deferral. For each calendar year after the date of signing this Agreement, repayment of ___% of the amount loaned shall be waived and for as long as the Applicant or a qualifying immediate family member who has inherited the Subject Property occupies the Subject Property as his/her principal place of residence, and complies with the terms of this Agreement.

4. Property Maintenance. The Applicant agrees and understands that periodic site inspections can and will be made by Town staff upon twenty-four (24) hours notice for outside inspections, and forty-eight (48) hours notice for inside inspections. Said inspection will be for the purpose of determining whether adequate maintenance of the Subject Property is being performed by the Applicant. In consideration of the Loan, the Applicant promises to maintain the Subject Property in compliance with Town standards, as set forth in the Unified Development Code. The Town shall give Applicant thirty (30) days notice in order to cure any deficiencies in property maintenance as determined by the Town. If such deficiencies are not cured, the Town may declare a default and exercise the remedies set forth in paragraph five here under.

5. Loan Repayment. Up until the time that the Loan has been entirely deferred, the Town reserves the right to call

the non-deferred portion of the Loan upon the occurrence of any of the following:

- a. Transfer, voluntary or involuntary, including by operation of law, of any interest in the Subject Property by the Applicant, except pursuant to Paragraph 5.1.
- b. Failure of the Applicant or qualified immediate family member who inherited the Subject Property to use and occupy the Subject Property as his/her principal place of residence.
- c. Upon death of the Applicant, unless transferred pursuant to Paragraph 5.1.
- d. Failure of the Applicant to comply with any term of this Agreement.
- e. Assignment in violation of Paragraph 12.

5.1 Qualified Transfer. The Subject Property may be transferred without requiring the repayment of the non-deferred portion of the Loan, provided the receiving party maintains the Subject Property as its principal residence and would qualify to receive the Loan in the same manner in which the Applicant was qualified, according to income limits revised to be current at the time of transfer.

5.2 Notice. After proper notice of the Town's intent to call the Loan, the Town may with consent of the Town Council, require the Applicant to repay the non-deferred portion of the Loan or the Town may foreclose upon the non-deferred portion of the Loan

6. Security. The Applicant agrees that the Loan shall be secured by a Real Estate Mortgage or Deed of Trust and Promissory Note executed by the Applicant, which shall be duly recorded in the Office of the County Recorder of Gila County, Arizona.

7. Insurance. The Applicant shall maintain fire and extended coverage insurance in an amount sufficient to cover any and all loan indebtedness against the Subject Property and shall provide the Town with a certificate attesting to such insurance.

8. Condemnation. In the event the Subject Property is taken by condemnation, the proceeds of such condemnation shall be first paid to the Town as holder of the Note which secures the Loan, up to the amount of the Loan.

9. Dispute Resolution. Any dispute, controversy, claim, or cause of action arising out of or related to this Contract shall be governed by Arizona law and may, but in no event need, be settled by submission, with the written consent of both parties, to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq., and judgment upon any award rendered by the arbitrator(s) shall be entered in the Superior Court of Gila County, Arizona, or any such dispute, controversy, claim or cause of action may be litigated in a court. The parties agree that the jurisdiction and venue for any such dispute, controversy, claim, litigation, or cause of action shall be Gila County, Arizona, and each party waives the right to object to Gila County, Arizona, as an appropriate forum or venue. Neither party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claims, litigation, or cause of action, but each party shall bear its own attorneys' fees, whether the same is resolved through arbitration, litigation in a court, or otherwise.

10. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in effect.

11. Notices. All notices, requests, payments, and other communications hereunder shall be deemed given if personally delivered or mailed to the following addresses:

To Town
Town of Payson
Attn: Town Manager
303 North Beeline Highway
Payson, Arizona 85541

To Applicant
NAME
ADDRESS
Payson, AZ 85541

12. Assignment. This Agreement or any part thereof shall not be assigned by either party; any assignment other than pursuant to paragraph 5.1, in violation of this Paragraph 12 shall invoke the provisions of Paragraph 5

hereinabove and terminate this Agreement when the Loan is fully repaid.

13. Conflicts of Interest. This Agreement is subject to the provisions of A.R.S. § 38.511, the terms of which are incorporated herein.

14. Recordation. This Agreement shall be duly recorded in the Office of County Recorder of Gila County, Arizona not later than thirty (30) days after it is executed by the Town and the Applicant.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written are superceded by and merged into this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by Town and Applicant.

16. Headings and Counterparts. The headings used in this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

17. Construction of Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

IN WITNESS THEREOF, the parties have executed this Agreement or caused their duly authorized official to execute this Agreement.

APPLICANT

TOWN OF PAYSON
An Arizona municipal corporation

By _____
NAME
ADDRESS
Payson, AZ 85541

By _____
Bob Edwards, Mayor

ATTEST:

By _____
Silvia Smith, Town Clerk