

City Note

(Secured by Deed of Trust)

Downpayment Assistance Loan Program (DALP)

DALP Loan #

Date: March 20, 2014

Principal Amount:

Term: 40 years

Share Appreciation: _____%

Interest Rate: 0%

Borrower(s) Name:

Property Address: _____ **San Francisco, CA**

1. Borrower's Promise to Pay. For value received, the undersigned ("Borrower") hereby promises to pay to the City and County of San Francisco, a municipal corporation ("Lender") the principal amount of U.S. _____ **Dollars (\$0)** (the "Principal Amount") plus a Share of Appreciation in the value of the Property as defined in Section 6 below, to the order of the Lender. The interest rate on the principal amount is 0%.
2. Borrower acknowledges that the loan in the Principal Amount made to Borrower by Lender as of the date of this Note was made pursuant to the City Downpayment Assistance Loan Program (DALP). Borrower is acknowledged the combined household income cannot exceed 120% of the area median income for the San Francisco Metropolitan Statistical Area, as published by the U.S. Department of Housing and Urban Development as of the date of the City Note.
3. Use of Principal Amount. The Lender has provided the Principal Amount to Borrower to finance a portion of Borrower's downpayment or closing cost for the purchase of a single-family residence located at _____ **San Francisco, CA** (the "Property"). The purchase price of the Property is _____ (the "Purchase Price").
4. Security. The Borrower's obligations under this Note are secured by a Deed of Trust and Assignment of Rents executed by Borrower, as Trustor, for the benefit of Lender, as Beneficiary (the "Deed of Trust").
5. Time and Place of Payments.
 - (a) The Principal Amount of this Note, together with the Share of Appreciation as defined in Section 6 below, shall be due and payable in full on the Maturity Date to the City and County of San Francisco at the Mayor's Office of Housing and Community Development, One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103 or at such other place as the City may from time to time designate.
 - (b) The Maturity Date shall be the earliest to occur of the following:
 - (i) The date which is Forty (40) years from the date of this Note;
 - (ii) An acceleration by Lender of this Note in the event of a default hereunder or under the City Deed of Trust; or
 - (iii) The date of the first sale or transfer of the Property to occur after the date of this Note. For the purposes of this Note, "sale or transfer" shall mean any rental of the property where the Borrower no longer occupies the property as a principal residence, any transfer of title to the Property, including entering into any installment sales contract giving the purchaser or a third party a right to possess the Property or any portion of the Property before transfer of title, and including judicial sale on execution or other legal process of foreclosure or trustee's sale of the Property (regardless of whether initiated by the Lender); provided, however, that "transfer" does not include either of the following:
 - (A) a transfer resulting from death of a Borrower where the transfer is to a co-Borrower; or
 - (B) a transfer by Borrower into an inter vivo trust in which Borrower is the sole beneficiary and Borrower continues to occupy the Property as a principal residence;
 - (C) a transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incidental to such a decree in which one of the Borrowers becomes the sole owner of the Property;
 - (D) a transfer between co-Borrowers.

6. Share of Appreciation. On the Maturity Date or on the date of any prepayment under Section 7, the Borrower agrees to repay to Lender the Principal Amount plus the "Share of Appreciation" calculated under this Section 6. The Share of Appreciation is defined as _____ **Percent (%)** of the increase in the Fair Market Value of the Property, if any, from the date of Borrower's purchase of the Property through the Maturity Date. The Share of Appreciation has been determined by dividing the Principal Amount by the Fair Market Value of the Property as of the date of this Note, as defined in this Section.
- (i) The Fair Market Value of the Property at the time of the Borrower's purchase of the Property is the greater of the Purchase Price or the Appraised Value of the Property at the time of purchase.
 - (ii) The Fair Market Value of the Property as of the Maturity Date is the greater of the Borrower's sales price of the Property (if applicable) or the Appraised Value of the Property as of the Maturity Date.
 - (iii) The Lender and Borrower may determine the Fair Market Value by mutual agreement, without obtaining an appraisal.
 - (iv) If the Lender and Borrower are unable to agree on a Fair Market Value under Subsection (iii), then the "Appraised Value" of the Property is defined as the value that would be agreed to by a seller who is willing to sell but under no particular or urgent necessity or obligation to sell, and a buyer who is ready, willing and able to buy but under no particular or urgent necessity to buy, each dealing with the other with full knowledge of all the uses and purposes for which the Property is reasonably adaptable and available. For purposes of determining the Appraised Value, the Borrower shall select an appraiser who is an "MAI" member of the American Institute of Real Estate Appraisers or an "SRPA" member of the Society of Real Estate Appraisers (or any such equivalent designations). Lender has the option, at Lender's sole expense, to select an appraiser to conduct an additional appraisal of the Property. If the two appraisals are not in agreement as to the Appraised Value of the Property, the amounts determined by the appraisals will be averaged to determine the Appraised Value of the Property for purposes of this Subsection (b).
8. Borrower's Right to Prepay. The Borrower may repay the Principal Amount, together with the Share of Appreciation as of the date of such prepayment, calculated under Section 5 above, provided that such prepayment is in full and not in part. No prepayment charge will be imposed by the Lender.
9. Loan Charges. If any law which applies to this loan and which sets maximum loan charges is finally interpreted so that any amounts 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 Borrower which exceeded permitted limits will be refunded to Borrower. The Lender may choose to make this refund by making a direct payment to Borrower or by another method determined by Lender.
10. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application..
- a. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Note. Borrower shall not destroy, damage or impair the Property, allows the Property to deteriorate, or commit waste on the Property. Borrower shall be in default under this Note if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's reasonable judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Note. Borrower may cure such a default and reinstate Borrower's obligations, by causing the action or proceeding to be dismissed with a ruling that, in Lender's reasonable determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Note or Lender's security interest.
 - b. Borrower shall also be in default under this Note if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the Loan evidenced by the Note, including, but not limited to, representations concerning (1) Borrower's intent to occupy the Property as a principal residence; (2) Borrower's income; and (3) Borrower's eligibility as a first time homebuyer under the requirements of the DALP; (4) Borrower's completion of the approved Homebuyer Education Course and (5) Borrowers household size and composition.
11. Borrower's Failure to Pay as Required.
- (a) Default. If Borrower fails to pay the Principal Amount plus the Share of Appreciation on the Maturity Date, Borrower will be in default under this Note.
 - (b) Notice of Default; Interest. Upon a default by Borrower, Lender shall provide written notice of such default to Borrower. Borrower shall have thirty (30) days from the effective date of such notice to cure the default. In the event Borrower fails to cure the default within the thirty (30) day period, the Principal Balance plus the Share of Appreciation, plus simple interest on such amount at a rate equal to ten percent (10%) from the end of such thirty-day period through the date of full repayment of that amount to the City, shall be immediately due and payable without the necessity of any further notice or

demand. The City may exercise all remedies available at law or in equity to obtain full payment of all amounts due, including, as applicable, costs described in Section 9(d).

(c) No Waiver by Lender. The Lender's failure to exercise any remedies upon a default shall not be a waiver of the Lender's right to exercise such remedies.

(d) Payment of Lender's Costs and Expenses. If the Borrower is in default under this Note, the Lender's costs and expenses of enforcing this Note, including reasonable attorney's fees, shall be added to the Principal Amount, to the extent not prohibited by applicable law.

12. Notices. All notices required by this Note shall be made in writing, and shall be deemed communicated by personal delivery or by United States mail, postage prepaid, as of the earlier of actual receipt or three days from mailing, addressed as follows:

To Lender: Director
Mayor's Office of Housing and Community Development
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

To Borrower: At the Property Address in Section 4

or such other address as either Lender or Borrower may designate, from time to time, by written notice sent to the other party in like manner.

13. Obligations Under this Note. If more than one person signs this Note, each person is jointly and severally liable for the obligations under this Note. This means that each such 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, and Lender may require any one person to pay all amounts owed under this Note. Any person who is a guarantor, surety or endorser of this Note is also 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 Lender may enforce its rights under this Note against each person individually or against all of us together.
14. Waivers. The Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Lender to demand payment of amounts due. "Notice of dishonor" means the right to require the Lender to give notice to other persons that amounts due have not been paid.
15. Subordination. The indebtedness evidenced by this Note, and any other financial obligation which may hereafter be imposed on Borrower by the Lender, is as of the date of this Note subordinate to the indebtedness evidenced by a note in the original principal amount of \$_____ payable to _____ (**First Loan Lender**) which note is secured by a first deed of trust on the Property (the "First Deed of Trust"). Any further subordination of this Note to current or future financing secured by a deed of trust on the Property shall be at the sole discretion of the Lender.
16. Sunshine Ordinance. The Borrower understands that under Section 67.24(e) of San Francisco Administrative Code, applications for financing and all other records of communications between the City and the Borrower must be open to public inspection immediately after a contract has been awarded. All information provided by Borrower which is covered by that ordinance (as it may be amended) will be made available to the public upon appropriate request.

Borrower

Co-Borrower

Signature- Print Borrower's Name

Signature – Print Co-Borrower's Name