

MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT
CITY AND COUNTY OF SAN FRANCISCO



LONDON N. BREED
MAYOR

ERIC D. SHAW
DIRECTOR

April 22, 2022

Title Company Name
555 Main Street
San Francisco, CA 94107
Attention: Ms. Escrow Officer

Delivered via email: escrow.officer@title.com

RE: Property: **123 Sample Street, Unit 2, San Francisco, CA 94124**
Borrowers: **Mary Sample, John Sample, Ellen Sample and Jack Sample**
Escrow Number: **12-01234578-EO**
MOHCD Loan Number: **DKDALP221000-GFDK**
MOHCD Grant Number: **WBG221000-GFDK**

Dear Escrow Officer:

These instructions are delivered to you by the City and County of San Francisco (the "City"), acting through its Mayor's Office of Housing and Community Development ("MOHCD"), in connection with purchase of the above property ("Property") by **Mary Sample, John Sample, Ellen Sample and Jack Sample** (the "Borrower"). This letter and the attached documents will confirm the Borrowers' eligibility under the City's Dream Keeper Downpayment Assistance Loan Program ("DK-DALP") and the Dream Keeper Wealth Building Grant ("Grant"). This package contains the closing documents that need to be signed and recorded for the final closing.

A. Closing Documents

In connection with this escrow, the City is depositing the following documents:

1. **Promissory Note** Secured by Deed of Trust in the amount of **\$500,000** for the benefit of the City and dated as of the date it is executed by Borrower ("DK-DALP Note").
2. **Deed of Trust and Assignment of Rents** dated as of the date executed by the Borrower as Trustor, for the benefit of the City to secure the DK-DALP Note ("DK-DALP Deed of Trust"). This DK-DALP Deed of Trust should be in the **second position** on the Property.
3. **Loan and Grant Agreement** executed between the Buyer and the City, setting out the terms and conditions of the DK-DALP Loan and the Grant ("Agreement").
4. **Deed of Trust and Assignment of Rents** dated as of the date executed by the Grantee, for the benefit of the City to secure the Agreement ("Grant Deed of Trust"). This Grant Deed of Trust should be in a junior lien position after all other City liens.
5. **Request for Copy of Notice of Default** under Section 2924b Civil Code for the DK-DALP loan and the Grant ("Request for Notice") executed on behalf of the City and County of San Francisco c/o Mayor's Office of Housing and Community Development.

B. Closing Procedures:

In connections with this transaction, the City authorizes you to execute the following actions:

1. Please arrange for Borrower to come into your office to execute the documents listed below. Borrower must execute the documents as indicated on the forms and below ([use blue ink pen for all signatures](#)). Borrower's signature must be acknowledged by a Notary Public where indicated. No power of attorney is allowed, and the Borrower must be physically present to sign the documents. At signing please provide to the Borrower a copy of each document signed by Borrower. Borrower must execute:
 - (a) the DK-DALP Note; Borrower's signature must be acknowledged by a Notary Public; **please date the DK-DALP Note as of the date it is executed by Borrower**;
 - (b) the DK-DALP Deed of Trust; Borrower's signature must be acknowledged by a Notary Public; **please date the DK-DALP Deed of Trust as of the date it is executed by Borrower**;
 - (c) the Agreement; **Please date the Agreement as of the date it is executed by Borrower**;
 - (d) the Grant Deed of Trust; Borrower's signature must be acknowledged by a Notary Public; **please date the DK-DALP Deed of Trust as of the date it is executed by Borrower**;
 - (e) the Request For Notice; Borrower's signature must be acknowledged by a Notary Public.
2. Once Borrower has executed the documents and the documents are dated as provided above, please attach:
 - (a) A copy of the legal description of the Property as Exhibit A to the DK-DALP Deed of Trust.
 - (b) A copy of the legal description of the Property as Exhibit A to the Grant Deed of Trust.
 - (c) A copy of the signed DK-DALP Note as Exhibit B to the DK-DALP Deed of Trust.
3. Under separate cover, you will receive from **Mortgage Lender Institution** (the "Senior Lender"), their separate escrow instructions, loan documents, and funds related to a purchase money mortgage in the amount of **\$970,800** for the purchase of the Property, including a first Deed of Trust securing said Property between the Buyer as Trustor, and the Senior Lender as Beneficiary ("Senior Lender Deed of Trust"). The Senior Lender Deed of Trust will be recorded against the Property in the first lien position, before the DK-DALP Deed of Trust and Grant Deed of Trust, as provided below.
4. The DK-DALP Deed of Trust will be recorded against the Property in the second lien position, and Grant Deed of Trust recorded against the Property in a junior lien position after all other City liens, as provided below.
5. You will submit a copy of the HO3 or HO6 Certificate of Insurance naming the City as additional mortgagee payee on the Property Insurance Policy. The loss payee clause shall read as follows:

City and County of San Francisco
C/O Mayor's Office of Housing and Community Development
Its Successors and /or Assigns
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

The MOHCD Loan Number and Grant Number referenced above must be properly reflected on the Property Insurance Policy.
6. You will collect a Post-Purchase Education Deposit in the amount of \$200 from Borrower, and properly reflect this amount on the settlement statement. A description of this line item will read: **Post-Purchase Education Deposit to HomeownershipSF**. The deposit shall be made in the form of escrow check or cashier's check, and payable to: HomeownershipSF, 275 5th Street, Suite 314, San Francisco, CA 94103. Please reference the Borrower's Name and Property Address on the check.
At closing or immediately after closing, please mail the following to HomeownershipSF at the above

address to the attention of the MOHCD Homeownership Program:

- An escrow or cashier's check in the amount of \$200; and
 - A certified copy of the final combined settlement statement
7. You must confirm that property taxes and hazard insurance are impounded by the Senior Lender. Impounds for taxes and insurance must be reflected on the estimated combined settlement statement, unless otherwise approved by MOHCD.
 8. You acknowledge that all City closing documents are to be recorded at no charge pursuant to California Government Code Section 27383. If the Recorder of the City and County of San Francisco charges a recording fee, you are to pay the recording fee and charge the Borrower. The City will not be responsible for any escrow or recording fees associated with the completion of these closing documents.
 9. You have prepared an estimated combined settlement statement for Borrower and the City.
 10. Indicate your receipt and acceptance of these instructions by signing the enclosed copy.
 11. **Return ALL of the following documents to MOHCD for review and approval before any document is recorded.**

Return **hard copies** of the following executed documents to MOHCD:

- **Original** executed DK-DALP Note
- **Original** executed Agreement

Return **electronic copies** of the following executed documents as **one PDF File** to MOHCD:

- Your acceptance of the City's Escrow Instructions;
 - Copy of borrower executed DK-DALP Note;
 - Copy of borrower executed DK-DALP Deed of Trust;
 - Copy of borrower executed Loan and Grant Agreement;
 - Copy of borrower executed Grant Deed of Trust;
 - Copy of Request for Notice on behalf of MOHCD;
 - Copy of the Grant Deed;
 - Copy of Senior Lender Closing Instructions, Note and Deed of Trust;
 - Copy of any other mortgage Closing Instructions, Note(s) and Deed of Trust(s) (if applicable);
 - Copy of the estimated combined (buyer and seller) settlement statement;
 - HO or HO6 Certificate of Insurance naming the MOHCD as second mortgagee/loss payee on the Hazard Insurance Policy naming the City as loss payee as provided above; and
 - Copy of funds to close (such as escrow receipt and copy of wire transmittal or cashier's check)
12. You are authorized to record the DK-DALP Deed of Trust and Grant Deed of Trust in the in the Official Records of the San Francisco County only when each of the following conditions has been fulfilled:
 - (a) You are in a position to issue to the City a 2006 ALTA Lender's Policy of Title Insurance for the DK-DALP insuring the validity and priority of the DK-DALP Deed of Trust in the full principal amount of the loan, and a 2006 ALTA Lender's Policy of Title Insurance for the Grant insuring the validity and priority of the Grant Deed of Trust in the full amount of the grant (collectively, the "Lender's Policy") secured thereby subject only to current non-delinquent real estate taxes and exceptions **1-12** listed in the Preliminary Report dated **March 01, 2022** and issued by your company for Order No. **12-01234578-EO** and a deed of trust securing the first mortgage by the Borrower. An ALTA Lender's Policy of Title Insurance will be required for each individual deed of trust.
 - (b) You are in a position to issue a CLTA Owner's Policy (or ALTA at the buyer's discretion) insuring the buyer's interest in the title to the property conveyed to the buyer by the seller.
 - (c) You are in a position to record a grant deed transferring the Property to Borrower (the "Grant Deed"), to record the Senior Deed of Trust in compliance with any instructions of the Senior Lender,

and to record DK-DALP Deed of Trust, Grant Deed of Trust, and Request for Notice in strict compliance with the City's escrow instructions.

- (d) City and Borrower have approved in writing the combined settlement statement.
- (e) You are prepared to deliver all documents and do all things as directed in paragraph 13 below.
- (f) You receive a written approval to proceed with recording from a MOHCD staff member.

13. You will record document in the order indicated below:

- (a) Grant Deed;
- (b) Senior Lender Deed of Trust;
- (c) DK-DALP Deed of Trust;
- (d) Grant Deed of Trust
- (e) Request for Notice; and
- (f) Any other junior Deed of Trust (if applicable)

14. When the documents listed above have been recorded in accordance with these instructions:

- (a) On the same day that the above documents are recorded, deliver funds to Borrower, the City, and any other entities in accordance with the approved settlement statements, and disburse the Post-Purchase Education Deposit as provide in paragraph 6, above.
- (b) Within five (5) business days after the above documents are recorded, deliver the following electronically to MOHCD at mohcd.closingdocs@sfgov.org:
 - i. a conformed copy of the DK-DALP Deed of Trust, Grant Deed of Trust, and the Request for Notice, each evidencing recordation;
 - ii. the Lender's Policy for the DK-DALP Deed of Trust and Grant Deed of Trust;
 - iii. one (1) copy of each of the other documents deposited with you, with recording information, if applicable; and
 - iv. the final combined settlement statement.

C. General Instructions:

- 1. The Title Company must assure itself that all conditions referred to above have been fulfilled and must strictly adhere to the procedures listed above in closing escrow.
- 2. Seller and lender credit funds are allowed for non-recurring closing costs only. All credit must be approved by MOHCD and used in escrow. Cash back to Borrower exceeding the amount of \$250 will not be allowed. Settlement with any credit as cash back to Borrower exceeding the amount of \$250 must be applied towards the principal of the DK-DALP loan.
- 3. The City and County of San Francisco reserves the right to revoke or amend these instructions and recall documents at any time prior to recordation and disbursement of funds.
- 4. Allow 5 business days for funds to be wired to the escrow account after MOHCD staff receive and review a complete package of closing documents requested in paragraph (B)11 of these instructions. We will need 5 business days in advance to release the wire transfer. Include this timeline into your process.
- 5. **No escrow closing or recording can commence without written approval by MOHCD.**
- 6. If escrow does not close within 30 days from the date of these instructions, please return all documentation and funds to the City and County of San Francisco, Mayor's Office of Housing and Community Development – MOHCD Homeownership Program, 1 South Van Ness Ave, 5th Floor, San Francisco, CA 94103.

Please sign below to indicate your understanding of this transaction. In the event you are unable to comply with these instructions as requested, or if there are to be any changes with respect to the transactions contemplated hereby, please contact MOHCD at 415-701-5500 before proceeding.

Thank you for your cooperation.

Sincerely,

Tammie Little

Tammie Little
HBMR Lending Specialist

Accepted and Agreed to this _____ day of _____, 20____

BY: _____
Ms. Escrow Officer, Title Company Name

Sample

Secured Promissory Note

(Secured by Deed of Trust)

Dream Keeper Downpayment Assistance Loan Program (DK-DALP) Funding Source: General Fund-Dream Keeper

Loan Number: DKDALP221000-GFDK

Date: _____

Principal Amount: \$500,000

Share Appreciation: 34%

Borrower(s) Name: Mary Sample, John Sample, Ellen Sample and Jack Sample

Property Address: 123 Sample Street, Unit 2, San Francisco, CA 94124

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, acting by and through the Mayor's Office of Housing and Community Development ("Lender"), the principal amount of **Five Hundred Thousand Dollars (\$500,000)** (the "Principal Amount") plus a "Share of Appreciation" in the value of the Property as defined in Section 6 below and as provided in this Secured Promissory Note (the "Note"). The interest rate on the principal amount is 0%.
2. DK-DALP Program Requirements. 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 DK-DALP regulations as described in the Downpayment Assistance Loan Program Manual, effective March 31, 2021 ("DALP Manual"), and therefore Borrower hereby agrees to comply with the DALP Manual, as amended from time to time, until this Note is full repaid. Borrower represents that Borrower's combined household income does not exceed **200%** of the area median income for the San Francisco Metropolitan Statistical Area, as published by the Lender and further defined in the DALP Manual as of the date of this Note.
3. Use of Principal Amount. The Lender has provided the Principal Amount to Borrower to finance a portion of Borrower's down payment or closing cost for the purchase of a single-family residence located at **123 Sample Street, Unit 2, San Francisco, CA 94124** (the "Property") as Borrower's Primary Residence. The purchase price of the Property is **One Million Four Hundred Eighty Seven Thousand Four Hundred Dollars (\$1,487,400)** (the "Purchase Price").
4. Security. 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) An acceleration by Lender of this Note in the event of a default hereunder or under the City Deed of Trust; or

- (ii) A sale of the Property through a judicial foreclosure, a trustee's sale of the Property (regardless of whether initiated by the Lender) through a non-judicial foreclosure, or any other legal process of foreclosure under California law; or
- (iii) The date of the first sale or transfer of the Property to occur after the date of this Note without the prior written consent of Lender. For the purposes of this Note, "sale or transfer" shall mean any voluntary or involuntary sale, assignment, rental of the property as described in the DALP Manual, or any transfer of title in 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; provided, however, that "transfer" does not include any of the following:
 - (A) a transfer resulting from death of a Borrower where the transfer is to a co-Borrower;
 - (B) a transfer by Borrower into an inter vivo trust as set forth in the DALP Manual;
 - (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, or
 - (E) a transfer by inheritance, will, or any other function of law to the Borrower's child, spouse or domestic partner not on title of the Property upon the death of Borrower and all City approved co-Borrowers, as set forth in the DALP Manual; provided that the proposed transferee shall execute a new secured promissory note and any other City documents related to this Note by which the proposed transferee shall assume all of the obligations under this Note, the Deed of Trust, and the DALP Manual (which includes, but is not limited to, the Principal Amount, together with the Share of Appreciation, accrued and unpaid interest on the Principal Amount), and the same rights and responsibilities with respect to those documents as the Borrower.

Notwithstanding the forgoing, Borrower must comply with the Transfer requirements and procedures as set forth in the DALP Manual.

c. All payments must be made in currency of the United States of America then lawful for payment of public and private debts. All payments must be made payable to the "City and County of San Francisco" of 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.

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, default interest (if any), plus the "Share of Appreciation" calculated under this Section 6. The "Share of Appreciation" is defined as the amount equal to **Thirty Four Percent (34%)** 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 lesser 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 (iv).
7. 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 6 above, provided that such prepayment is in full and not in part. No prepayment charge will be imposed by the Lender.
8. 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.
9. Occupancy, Preservation, Maintenance and Protection of Property; Borrower's Loan Application.
- a. Borrower shall occupy, establish, and use the Property as Borrower's Primary Residence commencing within sixty (60) days after the execution of this Note and ending on the Maturity Date. Borrower shall not destroy, damage or impair the Property, allow 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 Primary Residence; (2) Borrower's income and liquid assets; (3) Borrower's eligibility under the applicable requirements for a loan under the DALP Manual, including, but not limited to, eligibility as a First-time Homebuyer, First Responder, and/or Educator (each defined under the DALP

Manual), as applicable; (4) Borrower's completion of the approved Homebuyer Education Course; and (5) Borrowers household size and composition.

c. Borrower acknowledges that this Property is subject to certain use and occupancy restrictions under the DALP Manual, generally limiting the Property's use to low- to middle-income housing as further described in the DALP Manual. The DALP Manual also requires Borrower to occupy and use the Property as Borrower's Primary Residence and prohibit the Borrower from renting the Property at any time, except under limited circumstances set forth in the DALP Manual. Any violation of the use and occupancy restrictions by Borrower shall be deemed a default hereunder.

10. Default; Remedies; Default Interest.

a. Default. Any of the following will constitute an "Event of Default" under this Note:

- (i) 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, or
- (ii) If Borrower fails to comply with the DALP Manual, or
- (iii) the occurrence of any other default under this Note or default under an instrument securing the obligations of Borrower under this Note.

b. Notice of Default. 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.

c. Default Interest Rate. Upon the occurrence of an Event of Default under any City document, interest will be deemed to have accrued on the outstanding Principal Amount at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, commencing on the date of the Event of Default through the earlier of: (x) the date on which the Event of Default is cured; or (y) the date on which all amounts due under this Note are paid to Lender. Borrower acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Lender if Borrower defaults. Borrower further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to Lender's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any City document.

d. Remedies. Upon the occurrence of any Event of Default, without notice to or demand upon Borrower, which are expressly waived by Borrower (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by Borrower and any notices or demands specified in the Agreement, this Note or other instrument), Lender may exercise all rights and remedies available under this Note, the Agreement or otherwise available to Lender at law or in equity. Borrower acknowledges and agrees that Lender's remedies include the right to accelerate the Maturity Date by declaring the outstanding Principal Amount, together with the Share of Appreciation, accrued and unpaid interest on the Principal Amount at the Default Rate and unpaid fees and costs incurred, shall be immediately due and payable without the necessity of any further notice or demand, in which case, the Maturity Date will be superseded and replaced by the date established by Lender.

e. 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.

- f. 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.
11. 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: **Mary Sample, John Sample, Ellen Sample and Jack Sample**
123 Sample Street, Unit 2
San Francisco, CA 94124
- 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.
12. Waivers.
- a. 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.
- b. Borrower expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Lender's consent, and that Lender may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.
- c. No extension of time for payment of this Note or any installment hereof made by agreement by Lender with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.
- d. The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.
13. Subordination. After the date of this Note, the Lender's prior written approval, in its sole and absolute discretion, is required of any subordination of this Note to financing secured by a mortgage, deed of trust, lien, or other instrument on the Property.
14. Miscellaneous Provisions.
- a. 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.
- b. 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.

c. If any legal action is commenced by Lender to enforce any of the terms of this Note, the Deed of Trust, or rights arising from the Borrower's actions in connection with this Note, the Lender will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Note, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.

d. This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

e. This Note shall be governed by and construed in accordance with the laws of the State of California.

f. Time is of the essence for the performance of all obligations of Borrower hereunder.

BORROWER(S):

Mary Sample

John Sample

Ellen Sample

Jack Sample

(ALL SIGNATURES MUST BE NOTARIZED)

**Free Recording Requested Pursuant to
Government Code Section 27383**

When recorded, mail to:
Mayor's Office of Housing and Community
Development
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn.: DALP
Loan No.: **DKDALP221000-GFDK**
APN: **Block: 5000 Lot: 100**
Escrow No.: **12-01234578-EO**
Property Address: **123 Sample Street, Unit 2**
San Francisco, CA 94124

Space above This Line for Recorder's Use

DEED OF TRUST AND ASSIGNMENT OF RENTS

**Dream Keeper Downpayment Assistance Loan Program (DK-DALP)
Funding Source: General Fund-Dream Keeper**

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is made as of _____ by **Mary Sample, John Sample, Ellen Sample and Jack Sample** ("Borrower" or "Trustor") to **Title Company Name** ("Trustee") for the benefit of the City and County of San Francisco, a municipal corporation, whose address is c/o Mayor's Office of Housing and Community Development, 1 South Van Ness Avenue, 5th Floor, San Francisco, California 94103 ("Lender" or "Beneficiary"). This Deed of Trust is being made in accordance with Lender's Downpayment Assistance Loan Program, as described in the Downpayment Assistance Loan Program Manual ("DALP Manual").

Borrower owes Lender the principal sum of **Five Hundred Thousand Dollars (\$500,000)** (the "City Loan"). The City Loan is evidenced by Borrower's Secured Promissory Note ("Note") dated the same date as this Deed of Trust and executed by Borrower. Capitalized terms used in this Deed of Trust and not defined shall have the meanings set forth in the Note. The Note provides for payment of the principal amount of the Note, together with a Share of Appreciation in the value of the Property (as provided in the Note) on the Maturity Date.

In addition to the City Loan, the Borrower obtained a secured loan of **\$970,800** (the "First Deed of Trust Loan") from **Mortgage Lender Institution** (the "Senior Lender"), which loan is secured by a first deed of trust lien on the Property (the "First Deed of Trust"). The documents evidencing or securing the First Deed of Trust Loan are collectively referred to herein as the First Deed of Trust Loan Documents.

This Deed of Trust secures to Lender: (a) the repayment of the City Loan evidenced by the Note, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest as provided in the Note, advanced under Section 8 of this Deed of Trust to protect the security of this Deed of Trust; (c) payment of all other sums advanced by Lender to Borrower when evidenced by an instrument stating that those sums are secured by this Deed of Trust; and (d) the performance of Borrower's covenants and agreements under this Deed of Trust and Note.

1. **Grant in Trust.** For valuable consideration, Borrower irrevocably grants and transfers and assigns to Trustee, in trust, with power of sale, subject to the rights of the Senior Lender under the First Deed of Trust, the real property located in San Francisco County, California, which has the address **123 Sample Street, Unit 2, San Francisco, CA 94124** and is further described in Exhibit A attached hereto;

TOGETHER WITH all the improvements now or hereafter erected on the property; all easements, appurtenances, and fixtures now or hereafter a part of the property; all replacements of and additions to the Property; and all rents, issues and profits from the property, subject to Trustor's right to collect and retain the same as they become due and payable so long as there is no existing default hereunder. All of the foregoing is referred to in this Deed of Trust as the "Property."

2. **Title.** Borrower covenants that Borrower holds fee title to the Property and has the right to grant and convey the Property and, except for the First Deed of Trust and other encumbrances of record acceptable to the Senior Lender and the Lender, the Property is unencumbered. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to such encumbrances of record.

3. **Obligations Secured.** This Deed of Trust is given for the purpose of securing the following (collectively, the "Secured Obligations"):

a. Borrower's performance of all of its present and future obligations under the the Note and the DALP Manual.

b. Owner's performance of each agreement incorporated by reference contained in, or entered into in connection with, the Borrower Documents, and Owner's performance of its obligations under this Deed of Trust and any additional agreements of Owner incorporated by reference or contained herein.

c. Payment of the indebtedness evidenced by the Note in the amount described in the Note, all Share of Appreciation, interest, fees and costs due under the Note, and any additional sums Owner may borrow or receive from the City, when evidenced by another note (or notes) reciting it is so secured.

4. **Prior Deeds of Trust; Charges; Liens.**

a. The Borrower shall perform all of the Borrower's obligations under the First Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property, and leasehold payments or ground rents, if any. Borrower shall pay these obligations directly and on time to the person or entity owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

b. Except for the lien of the First Deed of Trust, Borrower shall promptly discharge any other lien which may encumber title to the Property unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which, in the Lender's sole discretion, operate to prevent the enforcement of the lien; or (c) obtains from the Lender an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. Except for the lien of the First Deed of Trust, if Lender determines that any part of the Property is subject to a lien which may encumber title to the Property without Lender's prior written consent, Lender may give Borrower a notice identifying the lien. Borrower shall discharge such lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Subordination.**

a. Lender and Borrower acknowledge and agree that this Deed of Trust is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust including all sums advanced for the purpose of protecting or further securing the lien of the First Deed of Trust, curing defaults by the Borrower under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust. In the event of a foreclosure or deed in lieu of foreclosure under the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low- to middle-income households or otherwise restricting the Borrower's ability to sell the Property shall have no further force or effect on subsequent owners or purchasers of the Property, unless Borrower or a

related entity of the Borrower acquires title through such foreclosure. Any person, including successors or assigns (other than the Borrower or a related entity of the Borrower), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the Property free and clear from such restrictions.

b. Further, if the Senior Lender acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Deed of Trust shall automatically terminate upon the Senior Lender's acquisition of title, provided that (i) the Lender has been given written notice of a default under the First Deed of Trust (which requirements may be satisfied by recordation of a notice of default under California Civil Code Section 2924 and (ii) the Lender shall not have cured the default under the First Deed of Trust, within 90 days from the date of notice sent to the Lender.

c. After the date of this Deed of Trust, the Lender's prior written approval, in its sole and absolute discretion, is required of any subordination of this Deed of Trust to financing secured by a mortgage, deed of trust, lien, or other instrument on the Property.

6. **Hazard or Property Insurance.**

a. Borrower shall keep the improvements now existing or hereafter erected on the Property insured on an all-risk form, excluding earthquake and flood, for one hundred percent (100%) of the replacement value, with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, and at Borrower's cost which shall be added to the Principal Amount and secured by this Deed of Trust, obtain coverage to protect Lender's rights in the Property in accordance with Section 8.

b. All insurance policies and renewals, including the issuer of such policies, shall be acceptable to Lender and shall include a standard mortgagee clause. All requirements hereof pertaining to insurance shall be deemed satisfied if the Borrower complies with the insurance requirements under the First Deed of Trust. All original policies of insurance required pursuant to the First Deed of Trust may be held by the Senior Lender; provided, however, Lender shall be named as a loss payee as its interest may appear and shall be named as an additional insured. If Lender requires, Borrower shall promptly give to Lender copies of all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier, the Senior Lender and Lender. Lender may make proof of loss if not made promptly by the Senior Lender or the Borrower.

c. Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not impaired as determined by Lender in its sole discretion. If the restoration or repair is not economically feasible or Lender's security would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days from the date of a written notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Deed of Trust, whether or not then due. The 30 day period will begin when the notice from Lender that the insurance carrier has offered to settle a claim is given.

d. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the payments referred to in the Note or change the amount of the payments. If under Section 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to the acquisition.

e. Notwithstanding the above, the Lender's rights to collect and apply the insurance proceeds hereunder shall be subject and subordinate to the rights of the Senior Lender to collect and apply such

proceeds in accordance with the First Deed of Trust.

7. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.

a. Borrower shall occupy, establish, and use the Property as Borrower's Primary Residence within sixty (60) days after the execution of this Deed of Trust. Except as otherwise expressly permitted by the DALP Manual, Borrower shall continue to occupy the Property as his or her Primary Residence. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default under this Deed of Trust 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 Deed of Trust. Borrower may cure such a default and reinstate Borrower's obligations, as provided in Section 21, 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 Deed of Trust or Lender's security interest.

b. Borrower shall also be in default under this Deed of Trust 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 Primary Residence; (2) Borrower's income and liquid assets; (3) Borrower's eligibility under the applicable requirements for a loan under the DALP Manual, including, but not limited to, eligibility as a First-Time Homebuyer, First Responder, and/or Educator (each defined under the DALP Manual), as applicable; (4) Borrower's completion of an approved Homebuyer Education Course; and (5) Borrower's household size and composition.

c. Borrower acknowledges that this Property is subject to certain use and occupancy restrictions under the DALP Manual, generally limiting the Property's use to low- to middle-income housing as further described in the DALP Manual. The DALP Manual also requires Borrower to occupy and use the Property as Borrower's Primary Residence and prohibits the Borrower from renting the Property at any time, except with under limited circumstances set forth in the DALP Manual. Any violation of the use and occupancy restrictions by Borrower shall be deemed a default hereunder and entitle the Lender to the remedies provided in Section 21 hereof.

d. If an Event of Default has occurred and is continuing related to any lease of the Property in violation of the Note and the DALP Manual, Borrower hereby irrevocably grants, transfers, and assigns to Beneficiary all of its right, title, and interest in and to any rents as additional security for the Secured Obligations, and Lender has the right, power, and authority to collect any and all such rents. Borrower hereby appoints Beneficiary its attorney-in-fact to perform any and all acts under this Subsection (d), if and at the times when Beneficiary in its sole discretion may so choose. Lender's right to any rents does not depend on whether or not Lender takes possession of the Property. In Lender's sole discretion, it may choose to collect any rents either with or without taking possession of the Property. If an Event of Default occurs while Lender is in possession of all or part of the Property and is collecting rents as permitted under this Deed of Trust, Lender, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Under no circumstances shall Lender have any duty to produce Rents from the Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Property, Lender is not and shall not be deemed to be a "mortgagee in possession" for any purpose; responsible for performing any of the obligations of the lessor under any lease; responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property; or liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it. Upon the occurrence and during the continuance of an Event of Default, Lender, at its option, may exercise its rights under this Section or otherwise provided under applicable law (including, but not limited to, under Section 2938 of the California Civil Code).

8. **Protection of Lender's Rights in the Property.**

a. If there is an event of default by the Owner under this Deed of Trust or any of the Owner Documents, or if the Property or any part thereof, or any interest therein is sold, conveyed, alienated or refinanced by the Owner, or by the operation of law or otherwise, in violation of any of the Owner Documents, all obligations secured by this Deed of Trust, at the City's sole option and without demand or notice, shall immediately become due and payable.

b. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Deed of Trust (including sums secured by the First Deed of Trust), appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this Section 8, Lender is not required to do so.

c. Any amounts disbursed by Lender under this Section 8 shall become additional debt of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, these amounts shall become a part of the Principal Amount of the Loan for the purpose of calculating the Share of Appreciation due to the Lender under the Note.

d. Prior to taking any actions under this Section 8, however, Lender shall notify the Senior Lender of such default in the manner provided in Section 21, and shall provide the Senior Lender with the opportunity to cure any such default under this Deed of Trust. All amounts advanced by the Senior Lender to cure a default hereunder shall be deemed advanced by the Senior Lender and shall be secured by the First Deed of Trust in accordance with the First Deed of Trust Loan Documents. In addition, the Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lender at least 60 days' prior written notice. Borrower acknowledges that any action by Lender hereunder to foreclose or accept a deed in lieu of foreclosure may, at Lender's option, be subject to any "due on sale" provisions of the First Deed of Trust.

e. Lender and Borrower further agree that a default hereunder shall constitute a default under the First Deed of Trust. In the event of a default hereunder, following any applicable notice and cure periods, the Senior Lender shall have the right to exercise all rights and remedies under the First Deed of Trust.

9. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. **Condemnation.**

a. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of the First Deed of Trust.

b. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the taking, unless Borrower and Lender otherwise agree in writing, the Lender shall receive payment of the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower, and the amount secured by this Deed of Trust shall be

reduced by the amount paid to the Lender. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

c. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due.

d. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of payments under the Note or change the amount of such payments.

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Any extension of the time for payment or modification or amortization of the sums secured by this Deed of Trust granted by Lender to Borrower or Borrower's successors in interest shall not operate to release the liability of the Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Joint and Several Liability.** In the event more than one individual or entity executes this note as a Borrower, then each Borrower's covenants and agreements shall be joint and several.

13. **Loan Charges.** If the Loan secured by this Deed of Trust is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower.

14. **Notices.** All notices required by this Deed of Trust shall be made in writing, and shall be deemed communicated by personal delivery or by United States mail, postage prepaid (unless applicable law requires use of another method), 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: **Mary Sample, John Sample, Ellen Sample and Jack Sample**
123 Sample Street, Unit 2
San Francisco, CA 94124

To the Senior Lender: **Mortgage Lender Institution**
555 Sample Street
San Francisco, CA 94105

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

15. **Governing Law; Severability.** This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision. To this end the provisions of this Deed of Trust and the Note are declared to be severable.

16. **Borrower's Copy.** Borrower shall be given one copy of the Note and a confirmed copy of this Deed of Trust.

17. **Transfer of the Property or a Beneficial Interest in Borrower.**

a. Except for a conveyance to the trustee under the First Deed of Trust, and except as otherwise permitted under the Note, if all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Deed of Trust.

b. If Lender exercises its option under Subsection (a), Lender shall give Borrower and the Senior Lender prior written notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

c. Notwithstanding Lender's right to invoke any remedies hereunder, as provided in Section 8 above, Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lender at least 60 days' prior written notice.

d. The Borrower and the Lender agree that whenever the Note or this Deed of Trust gives the Lender the right to approve or consent with respect to any matter affecting the Property (or the construction of any improvements thereon) or otherwise (including the exercise of any "due on sale" clause), and a right of approval or consent with regard to the same matter is also granted to the Senior Lender pursuant to the First Deed of Trust, the Senior Lender's approval or consent or failure to approve or consent, as the case may be, shall be binding on the Borrower and the Lender.

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions specified below, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Deed of Trust; or (b) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default; (c) pays all expenses incurred by Lender in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unchanged. Upon reinstatement by Borrower, this Deed of Trust and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 21.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Deed of Trust) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects payments due under the Note and this Deed of Trust. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with Section 14 above and applicable law. The notice will state the name and address of the

new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.**

a. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below) on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law (as defined below). The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

b. Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Prior to taking any such remedial action, however, the Borrower shall notify the Lender and the Senior Lender that such remedial action is necessary and shall obtain the Senior Lender's prior written consent for such remedial action.

As used in this Section 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Section 20, "Environmental Law" means federal, state or local laws that relate to health, safety or environmental protection.

21. **Acceleration; Remedies.**

a. Lender shall give notice to Borrower and the Senior Lender prior to acceleration following Borrower's breach of any covenant or agreement in this Deed of Trust. The notice shall specify: (i) the default; (ii) the action required to cure the default; (iii) a date, not less than 30 days from the date the notice is given to Borrower (and with respect to the Senior Lender, 60 days from the date the notice is given to the Senior Lender), by which the default must be cured; and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non existence of a default or any other defense of Borrower to acceleration and sale.

b. If the default is not cured by the Borrower on or before the date specified in the notice, and the Senior Lender has not exercised its right to cure the default, then Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Notwithstanding Lender's right to invoke any remedies hereunder, as provided in Section 8 above, the Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lender at least 60 days' prior written notice. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 21, including, but not limited to, reasonable attorneys' fees.

c. If Lender invokes the power of sale, Lender or Trustee shall mail copies of a notice of sale in the manner prescribed by applicable law to Borrower, the Senior Lender and to the other persons prescribed by applicable law. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by applicable law. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of

all or any parcel of the Property to any later time on the same date by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

d. Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (i) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (ii) to all sums secured by this Deed of Trust; and (iii) any excess to the person or persons legally entitled to it.

22. **Release.** Upon payment of all sums secured by this Deed of Trust, Lender shall reconvey this Deed of Trust without charge to Borrower. Borrower shall pay any recordation costs.

23. **Substitute Trustee.** Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

24. **Modification of First Deed of Trust Loan Documents.** The Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the First Deed of Trust Loan Documents, including any provisions requiring the payment of money.

25. **Successors and Assigns.** The covenants and agreements of this Deed of Trust shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Section 17.

BY SIGNING BELOW, the Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

BORROWER(S):

Mary Sample

John Sample

Ellen Sample

Jack Sample

(ALL SIGNATURES MUST BE NOTARIZED)

**EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY**

THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Sample

EXHIBIT B

ATTACH PHOTOCOPY OF BORROWER EXECUTED PROMISSORY NOTE

Sample

**Free Recording Requested Pursuant to
Government Code Section 27383**

When recorded, mail to:
Mayor's Office of Housing and Community
Development
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn.: DALP

Loan No.: **DKDALP221000-GFDK**
APN: **Block: 5000 Lot: 100**
Escrow No.: **12-01234578-EO**
Property Address: **123 Sample Street, Unit 2**
San Francisco, CA 94124

Space above This Line for Recorder's Use

REQUEST FOR COPY OF NOTICE OF DEFAULT

IN ACCORDANCE WITH SECTION 2924B, CIVIL CODE OF THE STATE OF CALIFORNIA, REQUEST IS HEREBY MADE THAT A COPY OF ANY NOTICE OF DEFAULT AND A COPY OF ANY NOTICE OF SALE UNDER THE DEED OF TRUST RECORDED CONCURRENT HERE WITH, OFFICIAL RECORDS OF SAN FRANCISCO, CALIFORNIA, EXECUTED BY Mary Sample, John Sample, Ellen Sample and Jack Sample AS TRUSTOR, TO Title Company Name AS TRUSTEE, IN WHICH Mortgage Lender Institution IS NAMED AS BENEFICIARY,

BE MAIL TO: Mayor's Office of Housing and Community Development of the
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

Dated: _____, 20____

BORROWER(S):

Mary Sample

John Sample

Ellen Sample

Jack Sample

(ALL SIGNATURES MUST BE NOTARIZED)

Loan and Grant Agreement

Dream Keeper Downpayment Assistance Loan Program Dream Keeper Wealth Building Grant

This Loan and Grant Agreement (this "Agreement") is made and entered into as of _____, 20____ (the "Agreement Date") between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), represented by the Mayor, acting through the Mayor's Office of Housing and Community Development ("MOHCD") and **Mary Sample, John Sample, Ellen Sample and Jack Sample** ("Borrower" or "Grantee").

- A. The Dream Keeper Downpayment Assistance Loan Program ("DK-DALP") and the Dream Keeper Wealth Building Grant ("Grant") were created as part of Mayor Breed's Dream Keeper Initiative.
- B. The DK-DALP seeks to widen the path to homeownership for historically marginalized and under-resourced communities by providing down payment assistance to qualified first-time homebuyers. The Grant seeks to promote wealth creation for San Francisco's under-resourced community by increasing equitable access to homeownership.
- C. The Borrower has executed a purchase agreement to purchase a fee interest in the real property located at **123 Sample Street, Unit 2, San Francisco, CA 94124** (the "Property").
- D. The Property is subject to certain use and occupancy restrictions under the Downpayment Assistance Loan Program Manual, effective March 31, 2021 ("DALP Manual"), generally limiting the Property's use to low- to middle-income housing as further described in the DALP Manual.
- E. The City is authorized to distribute funds from the City's General Fund ("Funds") to make a loan and a grant to finance a portion of Borrower's down payment and closing costs for the purchase of the Property as Borrower's Primary Residence in accordance with this Agreement.
- F. The City has reviewed Borrower's application for Funds and, in reliance on the accuracy of the statements in that application, agreed to make a loan of Funds to Borrower in the principal amount of **Five Hundred Thousand Dollars (\$500,000)** ("Loan Amount"), and a grant of Funds to Grantee in the amount of **Thirty Thousand Dollars (\$30,000)** ("Grant Amount," and together with the Loan Amount, collectively, the "Funding Amount") to finance a portion of the down payment and closing costs for the purchase of the Property in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1 Definitions

- 1.1 "Agreement Date" means the date first written above.
- 1.2 "City" means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through MOHCD. Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by MOHCD unless otherwise indicated.

- 1.3 “Closing Documents” means this Agreement, Note, DK-DALP Deed of Trust, and Grant Deed of Trust.
- 1.4 “DALP Manual” means the Downpayment Assistance Loan Program Manual, effective March 31, 2021, amended from time to time.
- 1.5 “DK-DALP Deed of Trust” means the deed of trust made in accordance with the City’s Downpayment Assistance Loan Program, executed by Borrower granting the City a lien on the Property to secure Borrower’s performance under this Agreement and the Note, in form and substance acceptable to the City.
- 1.6 “Funding Amount” has the meaning set forth in Recital F.
- 1.7 “Funds” has the meaning set forth in Recital E.
- 1.8 “Grant Amount” has the meaning set forth in Recital F.
- 1.9 “Grant Deed of Trust” means the deed of trust made in accordance with the DALP Manual, executed by Grantee granting the City a lien on the Property to secure Grantee’s performance under this Agreement, in form and substance acceptable to the City.
- 1.10 “Loan Amount” has the meaning set forth in Recital F.
- 1.11 “Maturity Date” has the meaning set forth in the Note.
- 1.12 “Median Income” means the median income level as determined and published by MOHCD, derived, in part, from the Department of Housing and Urban Department (HUD) on an annual basis for the San Francisco area, adjusted for household size, but not high housing cost area.
- 1.13 “Note” means the promissory note in the original principal amount of the Loan Amount in form and substance acceptable to the City.
- 1.14 “Primary Residence”: A residential dwelling where Borrower lives at least ten (10) out of twelve (12) months of each calendar year for the entire term of the loan.
- 1.15 “Property” has the meaning set forth in Recital C.

ARTICLE 2 Loan

- 2.1 **Loan Amount.** The City agrees to lend to Borrower the principal amount of **Five Hundred Thousand Dollars (\$500,000)** (“Loan Amount”), for the purposes set forth in Section 2.2 of this Agreement, on the terms and conditions set forth in the Closing Documents. The Loan Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement. Borrower’s repayment obligations with respect to the Loan Amount will be evidenced and governed by the Note, which will govern in the event of any conflicting provision in this Agreement.
- 2.2 **Use of the Loan Amount.** Borrower will use the Loan Amount to finance a portion of down payment and/or closing costs for the purchase of the Property as Borrower’s Primary Residence.
- 2.3 **Maturity Date of Loan.** Borrower will repay all amounts owing under the Note on the Maturity Date as set forth in the Note.

2.4 **Repayment of Deferred Loan.**

- (a) **Deferred Loan.** Borrower agrees that he/she is receiving a deferred loan and no payment is due prior to the Maturity Date. Borrower will repay the Loan Amount and share of appreciation at the rate of **Forty Five percent (45%)** set forth in the Note, to the City in one lump sum on the Maturity Date.
- (b) **Prepayment of Deferred Loan.** Borrower may prepay the Loan Amount and share of appreciation in full at any time during the Term without a prepayment penalty. However, the prepayment must be in full. Borrower may not prepay the Loan and share of appreciation in part.

2.5 **Security.** The Note shall be secured by the DK-DALP Deed of Trust.

**ARTICLE 3
Grant**

3.1 **Grant Amount.** The City agrees to provide to Grantee the amount of **Thirty Thousand Dollars (\$30,000)** ("Grant Amount"), for the purposes set forth in Section 3.2 of this Agreement, on the terms and conditions set forth in the Closing Documents. The Grant Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.

3.2 **Use of the Grant Amount.** Borrower will use the Grant Amount to finance a portion of down payment and/or closing costs for the purchase of the Property as Grantee's Primary Residence.

3.3 **Retention Period.** As a condition of City providing the Grant Amount to Grantee, Grantee shall remain the record owner of the Property, maintain possession of the Property, reside at the Property as Grantee's Primary Residence for no less than a three (3) year period commencing on the Closing Date and terminating on the third (3rd) anniversary of the Closing Date ("Retention Period"). Grantee's obligations under this Article 3 shall terminate at the end of the Retention Period, provided that Grantee has complied with all of the terms of this Agreement. For the purposes of this Agreement, the "Closing Date" means the date the Grant Deed of Trust is recorded in the Recorder's Office of San Francisco County.

3.4 **Repayment of Grant.** During the Retention Period, the Grant shall become immediately due and repayable back to Grantor by Grantee, together with liquidated damages in the event of a default (as provided in Section 3.5 below), upon the occurrence of any of the following events:

- (a) An acceleration by City of the Note and this Agreement in the event of a default hereunder or under the DK-DALP Deed of Trust and Grant Deed of Trust; or
- (b) A sale of the Property through a judicial foreclosure, a trustee's sale of the Property (regardless of whether initiated by City) through a non-judicial foreclosure, or any other legal process of foreclosure under California law; or
- (c) The date of the first sale or transfer of the Property to occur after the date of the Note and this Agreement without the prior written consent of City. For the purposes of this Agreement, "sale or transfer" shall mean any voluntary or involuntary sale, assignment, rental of the property as described in the DALP Manual, or any transfer of title in 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; provided, however, that "transfer" does not include any of the following:
 - (i) a transfer resulting from death of Borrower where the transfer is to a co-Borrower;

- (ii) a transfer by Borrower into an inter vivo trust as set forth in the DALP Manual;
- (iii) 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;
- (iv) a transfer between co-Borrowers, or;
- (v) a transfer by inheritance, will, or any other function of law to the Borrower's child, spouse or domestic partner not on title of the Property upon the death of Borrower and co-Borrowers approved by the City, as set forth in the DALP Manual; provided that the proposed transferee shall execute an assignment of this Agreement, and any other City Closing Documents by which the proposed transferee shall assume all of the obligations under this Agreement, the Note, the DK-DALP Deed of Trust, the Grant Deed of Trust, and the DALP Manual (which includes, but is not limited to, the Principal Amount, together with the Share of Appreciation, accrued and unpaid interest on the Principal Amount), and the same rights and responsibilities with respect to those documents as the Borrower.

3.5 **Liquidated Damages in the Event of Default.**

- (a) Upon the occurrence of a default under any City Closing Document, without waiving any other remedy of the City, interest will be deemed to have accrued on the Grant Amount at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, commencing on the date the Grant Amount is disbursed through the earlier of: (x) the date on which the event of default is cured; or (y) the date on which all amounts due under the City Closing Documents are paid to the City.
- (b) Grantee acknowledges and agrees that the default interest that must be paid in the event of a default under this Section represents a reasonable sum considering all the circumstances existing on the date of this Agreement and represents a fair and reasonable estimate of the costs that will be sustained by the City if Grantee defaults. Grantee further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to the City's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any City Closing Document. In addition, the default interest rate will apply to any amounts to be reimbursed to the City under any City Closing Document if not paid when due or as otherwise provided in any City Closing Document.

- 3.6 **Security.** Grantee's obligations under this Agreement and this Article 3 shall be secured by the Grant Deed of Trust. Provided that no uncured default has occurred and is continuing under the Closing Documents, Grantee's obligation under this Article 3 shall be deemed completed at the end of the Retention Period, and City shall reconvey the Grant Deed of Trust.

ARTICLE 4 Disbursements

- 4.1 **Use of Funds.** The Borrower will use the Loan Amount and the Grant Amount only in accordance with the provisions of this Agreement.
- 4.2 **Disbursement from the City to the Title Company.**
- (a) The Borrower or the seller will open an escrow with **Title Company Name** ("Title Company") and deposit a copy of this Agreement with the Title Company. Subject to

the terms of this Agreement, the City will disburse the entire Funds to the Title Company and instruct the Title Company to deposit the Funds into the escrow account. If the escrow does not close in the time permitted by the City, then the City will have the exclusive right to require the Title Company to return the entire Funds to the City, the funds deposited in the escrow account will not bear interest. By signing this Agreement, Borrower irrevocably directs the Title Company to follow all instructions from the City regarding return the entire Funds deposited into escrow, whether or not Borrower has followed those instructions.

- (b) The City's obligation to deposit the Funds into the escrow is subject to the following conditions precedent; provided, however, that if the Borrower has not satisfied these conditions within thirty (30) days from the Agreement Date, then the City may, in its sole discretion, terminate this Agreement, in which case this Agreement will be null and void:
- (i) The Borrower has executed and delivered to the City this Agreement and the other Closing Documents and the executed and acknowledged Note, DK-DALP Deed of Trust and Grant Deed of Trust;
 - (ii) The Borrower has delivered to the City a preliminary title report for the Property dated no earlier than sixty (60) days prior to the date for the close of the escrow.
 - (iii) The DK-DALP Deed of Trust and Grant Deed of Trust have been recorded as a valid lien on the Property, subject only to the exceptions approved by the City, in its sole discretion.
 - (iv) The Title Company has committed to provide to the City a policy of title insurance in form and substance satisfactory to the City, insuring the DK-DALP Deed of Trust and Grant Deed of Trust as a valid lien on the Property, subject only to those title exceptions approved by the City.

4.3 **Disbursements from Escrow.** The Title Company will disburse funds from escrow to the entities parties as instructed by the City. Borrower acknowledges that the Title Company will make disbursements only following the City's written authorization, and only if the Borrower is not in default under this Agreement, and no default has occurred that remains uncured, as of the date of this Agreement Agreement. By signing this Agreement, Borrower irrevocably directs the Title Company to follow all instructions from the City regarding the disbursement of all or any part of the Loan Amount and Grant Amount deposited into escrow, whether or not Borrower has joined those instructions.

ARTICLE 5

Income and Occupancy Restrictions

5.1 **Borrower's Income.** The Borrower represents and warrants that the Borrower's income does not exceed **Two Hundred Percent (200%)** of Median Income as set annually, adjusted for household size.

5.2 **Occupancy.** The Borrower acknowledges that the Property is subject to owner occupancy restrictions which are evidenced by this Agreement, the Note, the DK-DALP Deed of Trust, the Grant Deed of Trust, and the DALP Manual. Borrower will occupy, establish, and use the Property as Borrower's Primary Residence for no less than the Retention Period and until the loan is paid in full or Maturity Date according to the terms set forth in full in the Note and this Agreement. The Borrower will not lease or permit any rental of the Property. Borrower's violation of the restrictions is a material default under the Note and this Agreement.

5.3 **Nondiscrimination.** Borrower will not, in the operation and use of the Property, discriminate against or permit discrimination against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, source of income, gender identity, or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC), except to the extent permitted by law.

ARTICLE 6 Governmental Requirements

6.1 **Requirements.** The Borrower will comply with all applicable laws and regulations governing the use of City funds, including, but not limited to:

- (a) Conflict of Interest.
 - (i) The Borrower may not have any interest in any contract, subcontract, or agreement for any activities assisted with the Loan and the Grant, either for himself/herself or for those with whom he/she has family or business ties. Such a prohibited interest may exist where, for example, a family member of the Borrower has an interest in the mortgage funded pursuant to this Agreement.
 - (ii) Borrower must comply with the requirements of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code and Sections 1090 through 1097 and 87100 through 87103.5 of the California Government Code, all of which prohibit any officer or employee of the City from (1) having any financial interest in any agreement which that individual has authorized in his/her position as a City officer or employee, or (2) influencing any decision in which that individual has a financial interest.
 - (iii) In the event of any violation of the conflict of interest prohibitions, the Borrower agrees that the City may refuse to consider distribution of any part of the Loan Amount and Grant Amount to any entity or individual related to the Borrower until the violation has been corrected to the City's satisfaction, in its sole discretion.
- (b) Submitting False Claims: Monetary Penalties. Any borrower, grantee, contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A borrower, grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the borrower, grantee, contractor, subcontractor or consultant: (i) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (ii) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (iii) conspires to defraud the City by getting a false claim allowed or paid by the City; (iv) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or (v) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.
- (c) Public Disclosure. The Borrower understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code, Chapter 67) and the State Public Records Law (California Government Code section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder may be public records subject to public disclosure. The Borrower hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Agreement and as required by law.

- (d) Prohibition on Use of Public Funds for Political Activities. Borrower will comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Borrower is subject to the enforcement and penalty provisions in Chapter 12G.
- (e) Sunshine Ordinance. Borrower acknowledges and agrees that this Agreement and related documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by Borrower that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.
- (f) MacBride Principles. Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Borrower acknowledges and agrees that he or she has read and understood this Section.

ARTICLE 7 Monitoring and Inspection

- 7.1 **City Monitoring.** The Borrower understands that he/she shall submit an annual monitoring and enforcement report on a form provided by the City, on a date and location as provided by the City, to assure compliance with all terms and conditions in the Closing Documents and the Borrower will cooperate with the City's monitoring and will provide all information requested by the City. The report shall provide, at a minimum, information regarding occupancy status, any changes in title, and any other information the City may reasonably require in order to monitor compliance with the Closing Documents.
- 7.2 **Inspection.** The Borrower agrees that duly authorized representatives of the City may make reasonable entries upon and inspections of the Property. The City shall give Borrower prior written notice at the time of or prior to an inspection specifying reasonable cause for the inspection to monitor compliance by the Borrower with the terms of the Closing Documents.

ARTICLE 8 Sale or Transfer of the Property

- 8.1 **Sale or Transfer of Fee Interest.**
 - (a) The Borrower may not sell or otherwise transfer its fee interest in the Property without repaying all amounts due under the Closing Documents. The Loan is not assumable except for a transfer by inheritance, will, or any other function of law to the Borrower's child, spouse or domestic partner not on title of the Property upon

the death of Borrower and all City approved co-Borrowers pursuant to Section 3.4(c)(v) of this Agreement.

- (b) Therefore, as a condition to any sale or transfer of the Borrower's interest in the Property, the Borrower must first provide written notice to the City. The Borrower's notice will consist of a written request from the Borrower to the City for the City to provide a demand for repayment of the Loan.

8.2 **Lease/Sublease.** Any lease or permitted sublease of all or any part of the Property without the City's prior written consent is a transfer of the Property by the Borrower, and upon such lease or permitted sublease, all amounts due under the Closing Documents will be immediately due and payable to the City.

ARTICLE 9 Hazard or Property Insurance

9.1 **Borrower's Insurance.** The Borrower will maintain homeowner's insurance on an all-risk form, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all improvements located on the Property, with a deductible not to exceed One Thousand Dollars (\$10,000) each loss, including City as a loss payee.

9.2 **General Requirements.**

- (a) All policies required by this Agreement must be endorsed to provide thirty (30) days' written notice to the City before cancellation or non-renewal is effective.
- (b) With respect to any property insurance, the Borrower waives all rights of subrogation against the City to the extent of any loss covered by the Borrower's insurance.
- (c) Approval of the insurance by the City does not relieve or decrease the liability of the Borrower under the Closing Documents.
- (d) The City and its officers, agents and employees are not liable for any premium for insurance required under this Agreement.
- (e) Borrower must deliver all renewal policies and any replacements policies, together with premium receipts satisfactory to the City at least thirty (30) days before the expiration of existing policies.
- (f) All policies must be on the forms as required by the City and Borrower will deliver to the City the original of all policies, together with receipts satisfactory to the City evidencing payment of the premiums.

9.3 **Proof of Insurance before Closing.** Before Closing, Borrower must submit to MOHCD of the Certificate of Insurance naming the City as second mortgagee/loss payee on the property insurance policy. The loss payee clause must be listed as follow:

City and County of San Francisco
C/O Mayor's Office of Housing and Community Development
Its Successors and /or Assigns
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

ARTICLE 10 Default

10.1 **Default.** A default is any material breach by Borrower of any covenant, agreement, provision, or warranty contained in this Agreement or in any of the Closing Documents, including but not

limited to the following:

- (a) The Borrower fails to make any payment in the amount and when required under this Agreement; or
- (b) (i) Any lien that is senior in priority to the lien of the DK-DALP Deed of Trust or Grant Deed of Trust is recorded against the Property without the City's prior written consent, including any lien for property taxes that are currently due and payable, and the lien is not removed from title or otherwise remedied to the City's satisfaction within the time periods specified in Subsection (c), below; or (ii) any other lien is recorded against the Property without City's prior written approval.
- (c) The Borrower fails to perform or observe any other term, covenant, or agreement contained in any Closing Document and either (i) the failure continues for more than thirty (30) days after notice of such failure is given by the City to the Borrower, unless the failure is not reasonably capable of being cured within the 30-day period (but is reasonably capable of being cured within sixty (60) days after the notice) and the Borrower commences action to cure the failure within the 30-day period and diligently and continuously prosecutes the cure to completion and causes the failure to be completely cured within sixty (60) days after the notice, or (ii) the failure is not reasonably capable of being cured within sixty (60) days after notice of the failure is given by the City to the Borrower; or
- (d) Any representation or warranty made by the Borrower in any application for the DK-DALP Loan and/or the Grant or in any Closing Document proves to have been incorrect in any material respect when made; or
- (e) All or a substantial or material portion of the Property is damaged or destroyed by fire or other casualty, and the City has reasonably determined upon restoration or repair that the security of the DK-DALP Deed of Trust or the Grant Deed of Trust has been impaired or that the repair, restoration or replacement of the Improvements in accordance with the requirements of the DK-DALP Deed of Trust and Grant Deed of Trust is not economically practicable or is not completed within two (2) years of the receipt of insurance proceeds; or all or a substantial or material portion of the Property is condemned or appropriated by any governmental agency or subject to any action or other proceeding instituted by any governmental agency for any such purpose such that the Property cannot be operated for its intended purposes; or
- (f) The Borrower assigns or attempts to assign any rights or interest under any Closing Document, whether voluntarily or involuntarily, without the prior written consent of the City; or
- (g) The Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or the Borrower applies for or consents to the appointment of any receiver, trustee or similar official for it or for all or any part of its property (or any such appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days).

10.2 Remedies.

- (a) If, after the time provided in Section 10.1 the Borrower has not cured the default, the City may apply to any court, state, or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement, or any other remedies at law or in equity or any such other actions as shall be necessary or desirable to correct non-compliance with this Agreement.
- (b) Following an uncured default, the entire Loan Amount, together with accrued shared appreciation, and the amount set forth in Section 3.4, if applicable, will be immediately due and payable at the election of the City upon notice to the Borrower.

ARTICLE 11
Miscellaneous Provisions

- 11.1 **Assignment.** The Loan is not assumable except for a transfer by inheritance, will, or any other function of law to the Borrower's child, spouse or domestic partner not on title of the Property upon the death of Borrower and all City approved co-Borrowers pursuant to Section 3.4(c)(v) of this Agreement. The Borrower may not cause or permit any voluntary transfer, assignment, or conveyance of this Agreement, without the prior written consent of the City. Any attempted transfer, assignment, or conveyance will be voidable and, at the City's election, will constitute a breach of this Agreement. No consent by City to any transfer, assignment or conveyance will constitute a consent to any subsequent transfer, assignment, or conveyance.
- 11.2 **Notices.** All notices required by this Agreement must be made in writing, and will be deemed received, if sent 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 the City: Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
- To Borrower: **Mary Sample, John Sample, Ellen Sample and Jack Sample**
123 Sample Street, Unit 2
San Francisco, CA 94124
- To the Senior Lender: **Mortgage Lender Institution**
555 Sample Street
San Francisco, CA 94105
- or such other address as either party may designate, from time to time, by written notice sent to the other party in like manner.
- 11.3 **Subordinate Debt.** Borrower may not encumber the Property in any way (including loans secured by the Property subordinate to the DK-DALP Deed of Trust or Grant Deed of Trust) without the City's prior written approval.

ARTICLE 12
Hazardous Substances

The Borrower represents and warrants to City that, to the best of Borrower's actual knowledge, without independent investigation or inquiry, the Property has not been used for the storage, use or disposal of hazardous materials.

ARTICLE 13
Indemnity

The Borrower will indemnify, defend, and hold harmless the City and its respective officers, agents and employees (individually or collectively, an "Indemnitee") from and against any and all claims, losses, demands or any other matters arising out of or related to the Closing Documents, including, but not limited to, claims and losses resulting from any person or entity supplying services in connection with this Agreement. This indemnity from the Borrower will not apply to the extent that any claims, losses, demands, or other matters are caused solely by the Indemnitee's gross negligence or willful misconduct. The provisions of this paragraph shall survive the Term and any repayment of the Loan or termination of this Agreement.

ARTICLE 14
General Provisions

- 14.1 Relationship of the Parties. Nothing contained in this Agreement, and no act of the City, may be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the City and Borrower.
- 14.2 Fee Ownership. Borrower represents and warrants that Borrower will own the entire fee interest in the Property and no other person or entity will own any portion of the fee interest in the Property.
- 14.3 Entire Agreement. This Agreement and the other City Closing Documents incorporate the terms of all agreements made by the City and Borrower with regard to the City's loan and grant to the Borrower for purchase of the Property. No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties to this Agreement. No oral understandings or agreements not incorporated into the City Closing Documents will be binding on the City or Borrower.
- 14.5 City's Obligation. The City's sole obligation under this Agreement is limited to the providing of funds as described in this Agreement, up to the Loan Amount and Grant Amount. Under no circumstances, including breach of this Agreement, will the City be liable to the Borrower for any special or consequential damages arising out of actions or failure to act by the City in connection with any of the City Closing Documents.
- 14.6 Governing Law. This Agreement is governed by California law and the City's Charter and Municipal Codes.
- 14.7 Joint and Several Liability. If Borrower consists of more than one (1) person, each is jointly and severally liable to the City for the faithful performance of this Agreement. This means that each Borrower is potentially liable for repayment of the entire Loan Amount and Grant Amount, if applicable, and all other obligations under this Agreement.
- 14.8 Binding Effect. Subject to the limitation on assignment of the loan and grant, if applicable, the provisions of this Agreement will be binding upon and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors, and assigns.
- 14.10 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.
- 14.1 Time. Time is of the essence in this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the parties have executed this Agreement at San Francisco, California as of the date first written above.

BORROWER:

Mary Sample

John Sample

Ellen Sample

Jack Sample

CITY:

City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development

By: _____
Eric D. Shaw
Director

Approved as to Form:
DAVID CHIU,
City Attorney

By: _____
Deputy City Attorney

**Free Recording Requested Pursuant to
Government Code Section 27383**

When recorded, mail to:
Mayor's Office of Housing and Community
Development
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn.: DALP
Grant No.: **WBG221000-GFDK**
APN: **Block: 5000 Lot: 100**
Escrow No.: **12-01234578-EO**
Property Address: **123 Sample Street, Unit 2**
San Francisco, CA 94124

Space above This Line for Recorder's Use

DEED OF TRUST AND ASSIGNMENT OF RENTS

**Dream Keeper Wealth Building Grant
Funding Source: General Fund-Dream Keeper**

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is made as of _____, 20____ by **Mary Sample, John Sample, Ellen Sample and Jack Sample** ("Buyer" or "Grantee") to **Title Company Name** ("Trustee") for the benefit of the City and County of San Francisco, a municipal corporation, whose address is c/o Mayor's Office of Housing and Community Development, 1 South Van Ness Avenue, 5th Floor, San Francisco, California 94103 ("Grantor" or "Beneficiary"). This Deed of Trust is being made in accordance with Beneficiary's Downpayment Assistance Loan Program, as described in the Downpayment Assistance Loan Program Manual ("DALP Manual") and under the terms of a Loan and Grant Agreement ("Agreement") dated the same date as this Deed of Trust and executed between the Grantee and the Beneficiary. Capitalized terms used in this Deed of Trust and not defined shall have the meanings set forth in the Agreement.

Grantor provided to Grantee a grant in the amount of **Thirty Thousand Dollars (\$30,000)** ("Grant Amount"). The Agreement requires Grantee to repay the Grant Amount in the event of certain transfers of the Property or an event of default under the Agreement, including liquidated damages in the event of a default.

In addition to the Grant Amount, the Grantee obtained: (i) a secured loan of **\$970,800** (the "First Deed of Trust Loan") from **Mortgage Lender Institution** (the "Senior Lender"), which loan is secured by a first deed of trust lien on the Property (the "First Deed of Trust"), and (ii) a secured loan from the City and County of San Francisco evidenced by a note made by Buyer (the "DK-DALP Deed of Trust"). The First Deed of Trust and the DK-DALP Deed of Trust are collectively referred to herein as the "Senior Liens".

This Deed of Trust secures to Grantor: (a) the repayment of the Grant Amount under the Agreement, and all renewals, extensions and modifications of the Agreement; (b) the payment of all other sums, with interest as provided in the Agreement, advanced under Section 8 of this Deed of Trust to protect the security of this Deed of Trust; (c) payment of all other sums advanced by Grantor to Grantee when evidenced by an instrument stating that those sums are secured by this Deed of Trust; (d) the performance of Grantee's covenants and agreements under this Deed of Trust and Agreement; and (e) liquidated damages as provided in the Agreement in the event of a default under the Agreement or DALP Manual.

1. **Grant in Trust.** For valuable consideration, Grantee irrevocably grants and transfers and assigns

to Trustee, in trust, with power of sale, subject to the rights of the Senior Lender under the First Deed of Trust, the real property located in San Francisco County, California, which has the address **123 Sample Street, Unit 2, San Francisco, CA 94124** and is further described in Exhibit A attached hereto;

TOGETHER WITH all the improvements now or hereafter erected on the property; all easements, appurtenances, and fixtures now or hereafter a part of the property; all replacements of and additions to the Property; and all rents, issues and profits from the property, subject to Trustor's right to collect and retain the same as they become due and payable so long as there is no existing default hereunder. All of the foregoing is referred to in this Deed of Trust as the "Property."

2. **Title.** Grantee covenants that Grantee holds fee title to the Property and has the right to grant and convey the Property and, except for the First Deed of Trust and other encumbrances of record acceptable to the Senior Lender and the Grantor, the Property is unencumbered. Grantee warrants and will defend generally the title to the Property against all claims and demands, subject to such encumbrances of record.

3. **Obligations Secured.** This Deed of Trust is given for the purpose of securing the following (collectively, the "Secured Obligations"):

a. Grantee's performance of all of its present and future obligations under the Agreement and the DALP Manual.

b. Grantee's performance of each agreement incorporated by reference contained in, or entered into in connection with, the Closing Documents, and Grantee's performance of its obligations under this Deed of Trust and any additional agreements of Grantee incorporated by reference or contained herein.

c. Repayment of the Grant Amount as required under the Agreement, together with liquidated damages following an event of default under the Agreement or the DALP Manual, all interest, fees and costs due under the Agreement, and any additional sums Grantee may borrow or receive from the City, when evidenced by any instrument reciting it is so secured by this Deed of Trust.

4. **Prior Deeds of Trust; Charges; Liens.**

a. The Grantee shall perform all of the Grantee's obligations under the First Deed of Trust, including Grantee's covenants to make payments when due. Grantee shall pay all taxes, assessments, charges, fines and impositions attributable to the Property, and leasehold payments or ground rents, if any. Grantee shall pay these obligations directly and on time to the person or entity owed payment. Grantee shall promptly furnish to Grantor all notices of amounts to be paid under this Section. If Grantee makes these payments directly, Grantee shall promptly furnish to Grantor receipts evidencing the payments.

b. Except for the lien of the First Deed of Trust, Grantee shall promptly discharge any other lien which may encumber title to the Property unless Grantee: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Grantor; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which, in the Grantor's sole discretion, operate to prevent the enforcement of the lien; or (c) obtains from the Grantor an agreement satisfactory to Grantor subordinating the lien to this Deed of Trust. Except for the lien of the First Deed of Trust, if Grantor determines that any part of the Property is subject to a lien which may encumber title to the Property without Grantor's prior written consent, Grantor may give Grantee a notice identifying the lien. Grantee shall discharge such lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Subordination.**

a. Grantor and Grantee acknowledge and agree that this Deed of Trust is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust including all sums advanced for the purpose of protecting or further securing the lien of the First Deed of Trust, curing defaults by the Grantee under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust. In the event of a foreclosure or deed in lieu of foreclosure under the First Deed of Trust,

any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low- to middle-income households or otherwise restricting the Grantee's ability to sell the Property shall have no further force or effect on subsequent owners or purchasers of the Property, unless Grantee or a related entity of the Grantee acquires title through such foreclosure. Any person, including successors or assigns (other than the Grantee or a related entity of the Grantee), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the Property free and clear from such restrictions.

b. Further, if the Senior Lender acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Deed of Trust shall automatically terminate upon the Senior Lender's acquisition of title, provided that (i) the Grantor has been given written notice of a default under the First Deed of Trust (which requirements may be satisfied by recordation of a notice of default under California Civil Code Section 2924 and (ii) the Grantor shall not have cured the default under the First Deed of Trust, within 90 days from the date of notice sent to the Grantor.

c. After the date of this Deed of Trust, the Grantor's prior written approval, in its sole and absolute discretion, is required of any subordination of this Deed of Trust to financing secured by a mortgage, deed of trust, lien, or other instrument on the Property.

6. **Hazard or Property Insurance.**

a. Grantee shall keep the improvements now existing or hereafter erected on the Property insured on an all-risk form, excluding earthquake and flood, for one hundred percent (100%) of the replacement value, with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss. The insurance carrier providing the insurance shall be chosen by Grantee subject to Grantor's approval which shall not be unreasonably withheld. If Grantee fails to maintain coverage described above, Grantor may, at Grantor's option, and at Grantee's cost which shall be added to the Grant Amount and secured by this Deed of Trust, obtain coverage to protect Grantor's rights in the Property in accordance with Section 8.

b. All insurance policies and renewals, including the issuer of such policies, shall be acceptable to Grantor and shall include a standard mortgagee clause. All requirements hereof pertaining to insurance shall be deemed satisfied if the Grantee complies with the insurance requirements under the First Deed of Trust. All original policies of insurance required pursuant to the First Deed of Trust may be held by the Senior Lender; provided, however, Grantor shall be named as a loss payee as its interest may appear and shall be named as an additional insured. If Grantor requires, Grantee shall promptly give to Grantor copies of all receipts of paid premiums and renewal notices. In the event of loss, Grantee shall give prompt notice to the insurance carrier, the Senior Lender and Grantor. Grantor may make proof of loss if not made promptly by the Senior Lender or the Grantee.

c. Unless Grantor and Grantee otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Grantor's security is not impaired as determined by Grantor in its sole discretion. If the restoration or repair is not economically feasible or Grantor's security would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Grantee. If Grantee abandons the Property, or does not answer within 30 days from the date of a written notice from Grantor that the insurance carrier has offered to settle a claim, then Grantor may collect the insurance proceeds. Grantor may use the proceeds to repair or restore the Property or to pay sums secured by this Deed of Trust, whether or not then due. The 30 day period will begin when the notice from Grantor that the insurance carrier has offered to settle a claim is given.

d. Unless Grantor and Grantee otherwise agree in writing, any application of proceeds shall not reduce the Grant Amount. If under Section 21 the Property is acquired by Grantor, Grantee's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Grantor to the extent of the sums secured by this Deed of Trust immediately prior to the acquisition.

e. Notwithstanding the above, the Grantor's rights to collect and apply the insurance proceeds hereunder shall be subject and subordinate to the rights of the Senior Lender to collect and apply such proceeds in accordance with the First Deed of Trust.

7. Occupancy, Preservation, Maintenance and Protection of the Property; Grantee's Application; Leaseholds.

a. Grantee shall occupy, establish, and use the Property as Grantee's Primary Residence within sixty (60) days after the execution of this Deed of Trust. Except as otherwise expressly permitted by the DALP Manual, Grantee shall continue to occupy the Property as his or her Primary Residence during the Retention Period. Grantee shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Grantee shall be in default under this Deed of Trust if any forfeiture action or proceeding, whether civil or criminal, is begun that in Grantor's reasonable judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Deed of Trust. Grantee may cure such a default and reinstate Grantee's obligations, as provided in Section 21, by causing the action or proceeding to be dismissed with a ruling that, in Grantor's reasonable determination, precludes forfeiture of the Grantee's interest in the Property or other material impairment of the lien created by this Deed of Trust or Grantor's security interest.

b. Grantee shall also be in default under this Deed of Trust if Grantee, during the application process, gave materially false or inaccurate information or statements to Grantor (or failed to provide Grantor with any material information) in connection with the Agreement, including, but not limited to, representations concerning (1) Grantee's intent to occupy the Property as a Primary Residence; (2) Grantee's income and liquid assets; (3) Grantee's eligibility under the applicable requirements for a grant under the DALP Manual, including, but not limited to, eligibility as a First-Time Homebuyer, First Responder, and/or Educator (each defined under the DALP Manual), as applicable; (4) Grantee's completion of an approved Homebuyer Education Course; and (5) Grantee's household size and composition.

c. Grantee acknowledges that this Property is subject to certain use and occupancy restrictions under the DALP Manual, generally limiting the Property's use to low- to middle-income housing as further described in the DALP Manual. The DALP Manual also requires Grantee to occupy and use the Property as Grantee's Primary Residence and prohibits the Grantee from renting the Property at any time, except with under limited circumstances set forth in the DALP Manual and the Agreement. Any violation of the use and occupancy restrictions by Grantee shall be deemed a default hereunder and entitle the Grantor to the remedies provided in Section 21 hereof.

d. If an Event of Default has occurred and is continuing related to any lease of the Property in violation of the Agreement and the DALP Manual, Grantee hereby irrevocably grants, transfers, and assigns to Beneficiary all of its right, title, and interest in and to any rents as additional security for the Secured Obligations, and Grantor has the right, power, and authority to collect any and all such rents. Grantee hereby appoints Beneficiary its attorney-in-fact to perform any and all acts under this Subsection (d), if and at the times when Beneficiary in its sole discretion may so choose. Grantor's right to any rents does not depend on whether or not Grantor takes possession of the Property. In Grantor's sole discretion, it may choose to collect any rents either with or without taking possession of the Property. If an Event of Default occurs while Grantor is in possession of all or part of the Property and is collecting rents as permitted under this Deed of Trust, Grantor, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Under no circumstances shall Grantor have any duty to produce Rents from the Property. Regardless of whether or not Grantor, in person or by agent, takes actual possession of the Property, Grantor is not and shall not be deemed to be a "mortgagee in possession" for any purpose; responsible for performing any of the obligations of the lessor under any lease; responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property; or liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it. Upon the occurrence and during the continuance of an Event of Default, Grantor, at its option, may

exercise its rights under this Section or otherwise provided under applicable law (including, but not limited to, under Section 2938 of the California Civil Code).

8. **Protection of Grantor's Rights in the Property.**

a. If there is an event of default by the Owner under this Deed of Trust or any of the Owner Documents, or if the Property or any part thereof, or any interest therein is sold, conveyed, alienated or refinanced by the Owner, or by the operation of law or otherwise, in violation of any of the Owner Documents, all obligations secured by this Deed of Trust, at the City's sole option and without demand or notice, shall immediately become due and payable.

b. If Grantee fails to perform the covenants and agreements contained in this Deed of Trust, or there is a legal proceeding that may significantly affect Grantor's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Grantor may do and pay for whatever is necessary to protect the value of the Property and Grantor's rights in the Property. Grantor's actions may include paying any sums secured by a lien which has priority over this Deed of Trust (including sums secured by the First Deed of Trust), appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Grantor may take action under this Section 8, Grantor is not required to do so.

c. Any amounts disbursed by Grantor under this Section 8 shall become additional debt of Grantee secured by this Deed of Trust. Unless Grantee and Grantor agree to other terms of payment, these amounts shall become a part of the Grant Amount due to the Grantor under the Agreement.

d. Prior to taking any actions under this Section 8, however, Grantor shall notify the Senior Lender of such default in the manner provided in Section 21, and shall provide the Senior Lender with the opportunity to cure any such default under this Deed of Trust. All amounts advanced by the Senior Lender to cure a default hereunder shall be deemed advanced by the Senior Lender and shall be secured by the First Deed of Trust in accordance with the First Deed of Trust Loan Documents. In addition, the Grantor agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lender at least 60 days' prior written notice. Grantee acknowledges that any action by Grantor hereunder to foreclose or accept a deed in lieu of foreclosure may, at Grantor's option, be subject to any "due on sale" provisions of the First Deed of Trust.

e. Grantor and Grantee further agree that a default hereunder shall constitute a default under the First Deed of Trust. In the event of a default hereunder, following any applicable notice and cure periods, the Senior Lender shall have the right to exercise all rights and remedies under the First Deed of Trust.

9. **Inspection.** Grantor or its agent may make reasonable entries upon and inspections of the Property. Grantor shall give Grantee notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. **Condemnation.**

a. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Grantor, subject to the terms of the First Deed of Trust.

b. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Grantee. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the taking, unless Grantee and Grantor otherwise agree in writing, the Grantor shall receive payment of the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the

taking. Any balance shall be paid to Grantee, and the Grant Amount secured by this Deed of Trust shall be reduced by the amount paid to the Grantor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Grantee and Grantor otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

c. If the Property is abandoned by Grantee, or if, after notice by Grantor to Grantee that the condemnor offers to make an award or settle a claim for damages, Grantee fails to respond to Grantor within 30 days after the date the notice is given, Grantor is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due.

d. Unless Grantor and Grantee otherwise agree in writing, any application of proceeds to reduce the Grant Amount shall not extend or postpone Grantee's obligations under the Agreement or the DALP Manual.

11. **Grantee Not Released; Forbearance By Grantor Not a Waiver.** Any extension of the time for payment or modification or amortization of the sums secured by this Deed of Trust granted by Grantor to Grantee or Grantee's successors in interest shall not operate to release the liability of the Grantee or Grantee's successors in interest. Grantor shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Grantee or Grantee's successors in interest. Any forbearance by Grantor in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Joint and Several Liability.** In the event more than one individual or entity executes this note as a Grantee, then each Grantee's covenants and agreements shall be joint and several.

13. **Grant Charges.** If the Grant Amount secured by this Deed of Trust is subject to a law which limits liquidated damages, and that law is finally interpreted so that the liquidated damages or other charges collected or to be collected in connection with the Agreement exceed the permitted limits, then: (a) any such liquidated damages or charges shall be reduced by the amount necessary to reduce the amount to the permitted limit; and (b) any sums already collected from Grantee which exceeded permitted limits will be refunded to Grantee.

14. **Notices.** All notices required by this Deed of Trust shall be made in writing, and shall be deemed communicated by personal delivery or by United States mail, postage prepaid (unless applicable law requires use of another method), as of the earlier of actual receipt or three days from mailing, addressed as follows:

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

To Grantee: **Mary Sample, John Sample, Ellen Sample and Jack Sample**
123 Sample Street, Unit 2
San Francisco, CA 94124

To the Senior Lender: **Mortgage Lender Institution**
555 Sample Street
San Francisco, CA 94105

or such other address as either Grantor, Grantee or Senior Lender may designate, from time to time, by written notice sent to the others in like manner.

15. **Governing Law: Severability.** This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision. To this end the provisions of this Deed of Trust and the Note are declared to be severable.

16. **Grantee's Copy.** Grantee shall be given one copy of the Note and a confirmed copy of this Deed of Trust.

17. **Transfer of the Property or a Beneficial Interest in Grantee.**

a. Except for a conveyance to the trustee under the First Deed of Trust, and except as otherwise permitted under the Note, if all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Grantee is sold or transferred and Grantee is not a natural person) without Grantor's prior written consent, Grantor may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Grantor if exercise is prohibited by federal law as of the date of this Deed of Trust.

b. If Grantor exercises its option under Subsection (a), Grantor shall give Grantee and the Senior Lender prior written notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Grantee must pay all sums secured by this Deed of Trust. If Grantee fails to pay these sums prior to the expiration of this period, Grantor may invoke any remedies permitted by this Deed of Trust without further notice or demand on Grantee.

c. Notwithstanding Grantor's right to invoke any remedies hereunder, as provided in Section 8 above, Grantor agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lender at least 60 days' prior written notice.

d. The Grantee and the Grantor agree that whenever the Agreement or this Deed of Trust gives the Grantor the right to approve or consent with respect to any matter affecting the Property (or the construction of any improvements thereon) or otherwise (including the exercise of any "due on sale" clause), and a right of approval or consent with regard to the same matter is also granted to the Senior Lender pursuant to the First Deed of Trust, the Senior Lender's approval or consent or failure to approve or consent, as the case may be, shall be binding on the Grantee and the Grantor.

18. **Grantee's Right to Reinstate.** If Grantee meets certain conditions specified below, Grantee shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Deed of Trust; or (b) entry of a judgment enforcing this Deed of Trust. Those conditions are that Grantee: (a) pays Grantor all sums which then would be due under this Deed of Trust and the Agreement as if no acceleration had occurred; (b) cures any default; (c) pays all expenses incurred by Grantor in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Grantor may reasonably require to assure that the lien of this Deed of Trust, Grantor's rights in the Property and Grantee's obligation to pay the sums secured by this Deed of Trust shall continue unchanged. Upon reinstatement by Grantee, this Deed of Trust and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 21.

19. **Change of Loan Servicer.** If there is a change of the Loan Servicer, Grantee will be given written notice of the change in accordance with Section 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.**

a. Grantee shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below) on or in the Property. Grantee shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law (as defined below). The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

b. Grantee shall promptly give Grantor written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Grantee has actual knowledge. If Grantee learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Grantee shall promptly take all necessary remedial actions in accordance with Environmental Law. Prior to taking any such remedial action, however, the Grantee shall notify the Grantor and the Senior Lender that such remedial action is necessary and shall obtain the Senior Lender's prior written consent for such remedial action.

As used in this Section 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Section 20, "Environmental Law" means federal, state or local laws that relate to health, safety or environmental protection.

21. **Acceleration; Remedies.**

a. Grantor shall give notice to Grantee and the Senior Lender prior to acceleration following Grantee's breach of any covenant or agreement in this Deed of Trust. The notice shall specify: (i) the default; (ii) the action required to cure the default; (iii) a date, not less than 30 days from the date the notice is given to Grantee (and with respect to the Senior Lender, 60 days from the date the notice is given to the Senior Lender), by which the default must be cured; and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Grantee of the right to reinstate after acceleration and the right to bring a court action to assert the non existence of a default or any other defense of Grantee to acceleration and sale.

b. If the default is not cured by the Grantee on or before the date specified in the notice, and the Senior Lender has not exercised its right to cure the default, then Grantor at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Notwithstanding Grantor's right to invoke any remedies hereunder, as provided in Section 8 above, the Grantor agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lender at least 60 days' prior written notice. Grantor shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 21, including, but not limited to, reasonable attorneys' fees.

c. If Grantor invokes the power of sale, Grantor or Trustee shall mail copies of a notice of sale in the manner prescribed by applicable law to Grantee, the Senior Lender and to the other persons prescribed by applicable law. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by applicable law. Trustee, without demand on Grantee, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property to any later time on the same date by public announcement at the time and place of any previously scheduled sale. Grantor or its designee may purchase the Property at any sale.

d. Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence

of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (i) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (ii) to all sums secured by this Deed of Trust; and (iii) any excess to the person or persons legally entitled to it.

22. **Release.** Upon Grantee's completion of the obligations under the Agreement secured by this Deed of Trust at the end of the Retention Period, Grantor shall reconvey this Deed of Trust without charge to Grantee. Grantee shall pay any recordation costs.

23. **Substitute Trustee.** Grantor, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

24. **Modification of First Deed of Trust Loan Documents.** The Grantor consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the First Deed of Trust Loan Documents, including any provisions requiring the payment of money.

25. **Successors and Assigns.** The covenants and agreements of this Deed of Trust shall bind and benefit the successors and assigns of Grantor and Grantee, subject to the provisions of Section 17.

BY SIGNING BELOW, the Grantee accepts and agrees to the terms and covenants contained in this Deed of Trust.

GRANTEE(S):

Mary Sample

John Sample

Ellen Sample

Jack Sample

(ALL SIGNATURES MUST BE NOTARIZED)

**EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY**

THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Sample

EXHIBIT B

ATTACH PHOTOCOPY OF BUYER EXECUTED LOAN AND GRANT AGREEMENT

Sample