

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



LONDON N. BREED
MAYOR

DANIEL ADAMS
ACTING DIRECTOR

August 2, 2019

Cash & Carry Title Company
1234 Cash & Carry Lane
San Francisco, CA 94105
Attn: Walter Wallet

RE: Borrowers: **Joe Smith and Jane Smith**
Property: **1234 First Street, Unit 567 San Francisco, CA 94123**
Loan# **D16-1001-HTF**
Escrow # **123456789-CC**

Dear Escrow Officer:

These instructions are delivered to you pursuant to the purchase of the above unit (the "Property") by **Joe Smith and Jane Smith** (the "Borrower"). This letter and the attached documents will confirm the borrowers' eligibility under the City's DALP loan approval. This package contains the DALP loan documents that need to be signed and recorded for the final closing.

In connections with this sale the City instructs and authorizes you to execute the following actions:

A. Closing Documents:

In connection with this escrow, enclosed are the following documents that will require to be signed by Borrower (use blue ink pen for all signatures):

1. Promissory Note for the Downpayment Assistance Loan Program ("DALP") in the amount of **\$375,000** dated and executed by the Borrower as maker for the benefit of the City (The DALP Note). The **original** of this Promissory Note must return to our office.
2. DALP Deed of Trust (DALP Deed), dated as of the date executed by the Borrower as Trustor, for the benefit of the City to secure the "DALP" Note. This DALP Deed should be on the **second position** to the property. A conformed copy of the recorded Deed of Trust should be returned to our office.
3. Complete the blank sections of the form and have buyer sign and record a "**Request for Copy of Notice of Default**" on behalf of the City and County of San Francisco c/o Mayor's Office of Housing and Community Development. A conformed copy of the recorded Request for Copy of Notice of Default should be returned to our office after closing.

B. Closing Procedures:

Please take the following action with respect to DALP Loan Documents:

1. Borrower must execute, date and notarize the above documents as indicated. Attach a copy of the executed DALP Note as exhibit B to the DALP Deed to be recorded.
2. You are authorized to record the DALP Deed in the official records of the San Francisco County only when each of the following conditions has been fulfilled and only in a junior position to the primary lender's first mortgage loan amount of **\$765,000** through **Cash Mortgage**. Attach a copy of the executed DALP Note as exhibit B to the DALP Deed to be recorded.

3. Escrow must confirm that property taxes and hazard insurance are impounded by first mortgage lender. Evidence of impound account must be listed on the estimated Master Settlement Statement; A copy of an estimated Master Settlement Statement must be delivered to our office for review and approval before funding the loan. If we do not receive this information, we cannot fund the loan.
4. You are in a position to issue an ALTA Lender's Policy of Title Insurance with ALTA endorsement Form 8.1 Coverage insuring the validity and priority of the DALP Deed in the full principal amount of the DALP Note, with the **Cash Mortgage** deed of trust in first position and the DALP Deed of Trust in second position. An ALTA Lender's Policy of Title Insurance will be required for each individual loan.
5. Issue a new homeowner hazard insurance policy for the City and County of San Francisco as second lien holder of the property, c/o Mayor's Office of Housing and Community Development, 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103 and charge the cost of the premium to the Borrower.
6. The following must be delivered to MOHCD for review:
 - The executed original City Notes (DALP Note);
 - Certified copy of the executed City Notes (DALP Note);
 - Certified copy of the executed City Deeds (DALP Deed);
 - Certified copy of the Grant Deed;
 - Certified copy of the Requested for Copy of Notice of Default;
 - Certified copy of the First Deed of Trust;
 - Certified copy of the First Note;
 - Certificate of homeowner insurance Policy;
 - Estimated Master Settlement Statement;
 - Any other liens behind the City loan

All the above requested documents must be delivered 4 working days in advance before request for funding.

1. Funds will be wired to the escrow account in 4 business days after we receive and review all closing documents requested in item 4 of the escrow instructions. We will need 4 working days in advance for wire transfer.
2. After close of escrow, please return recorded DALP Deed together with an ALTA policy and a copy of the Master Settlement Statement and any other liens behind the City loans to my attention.

Please indicate your receipt and acceptance of these instructions by signing the enclosed copy and returning it to the Mayor's Office of Housing and Community Development, Attn: Jeanne Lu.

A. 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. Please issue copy of the Master Settlement Statement to: HomeownershipSF, attention: "MOHCD Homeownership 275 5th Street, Suite 314, San Francisco, CA 94103"
3. Seller and lender credit funds are allowed for non-recurring closing costs only. All credit must be used in escrow. Cash back to the borrower exceeding the amount of \$250.00 will not be allowed. Settlement with any credit as cash back to the buyer exceeding the amount of \$250.00 must be applied towards to the principal of the City DALP loan.
4. If you are unable to comply with these instructions, or if there are to be any changes with respect to the transactions contemplated hereby, please contact Jeanne Lu, at the Mayor's Office of Housing and Community Development, at 415-701-5548 or email her jeanne.lu@sfgov.org before proceeding.

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.

If escrow does not close within 45 days, please return all documentation and funds to the City and County of San Francisco, Mayor's Office of Housing and Community Development, 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103, Attention: Jeanne Lu.

Thank you for your cooperation.

Sincerely,

Jeanne Lu
Senior Loan Manager

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

BY: _____
Walter Wallet, Cash & Carry Title Company

SAMPLE

City Note
(Secured by Deed of Trust)
Downpayment Assistance Loan Program (DALP)
Housing Trust Fund

Loan # D16-1001-HTF

Date: _____

Principal Amount: \$375,000

San Francisco, California

Interest Rate: 0%

Share Appreciation: 0.31%

Borrower(s) Name: Joe Smith and Jane Smith

Term: 30 Years

Property Address: 1234 First Street, Unit 567, San Francisco, CA 94123

1. Borrower's Promise to Pay. For value received, the undersigned ("Borrower") hereby promises to pay to the City and County of San Francisco, a municipal corporation ("Lender") the principal amount of U.S. **Three Hundred Seventy Five Thousand Dollars (\$375,000)** (the "Principal Amount") plus a Share of Appreciation in the value of the Property as defined in Section 6 below, to the order of the Lender. The interest rate on the principal amount is 0%.
2. 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 City Downpayment Assistance Loan Program, **Housing Trust Fund (HTF)** and therefore Borrower hereby agrees to comply with the DALP Regulations and Requirements. Borrower is acknowledged the combined household income cannot exceed 120% of the area median income for the San Francisco Metropolitan Statistical Area, as published by the U.S. Department of Housing and Urban Development as of the date of the City Note.
3. Use of Principal Amount. The Lender has provided the Principal Amount to Borrower to finance a portion of Borrower's downpayment or closing cost for the purchase of a single-family residence located at **1234 First Street, Unit 567, San Francisco, CA 94123** (the "Property"). The purchase price of the Property ("Purchase Price") is **One Million Two Hundred Thousand Dollars (\$1,200,000)** (the "Purchase Price").
4. Security. The Borrower's obligations under this Note are secured by a Deed of Trust and Assignment of Rents executed by Borrower, as Trustor, for the benefit of Lender, as Beneficiary (the "Deed of Trust").
5. Time and Place of Payments.
 - (a) The Principal Amount of this Note, together with the Share of Appreciation as defined in Section 6 below, shall be due and payable in full on the Maturity Date to the City and County of San Francisco at the Mayor's Office of Housing and Community Development, One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103 or at such other place as the City may from time to time designate.
 - (b) The Maturity Date shall be the earliest to occur of the following:
 - (i) The date which is **thirty (30) years** from the date of this Note;
 - (ii) An acceleration by Lender of this Note in the event of a default hereunder or under the City Deed of Trust; or
 - (iii) The date of the first sale or transfer of the Property to occur after the date of this Note. For the purposes of this Note, "sale or transfer" shall mean any rental of the property where the Borrower no longer occupies the property as a principal residence as required by the DALP Regulations, any transfer of title to the Property, including entering into any installment sales contract giving the purchaser or a third party a right to possess the Property or any portion of the Property before transfer of title, and including judicial sale on execution or other legal process of foreclosure or trustee's sale of the Property (regardless of whether initiated by the Lender); provided, however, that "transfer" does not include either of the following:
 - (A) a transfer resulting from death of a Borrower where the transfer is to a co-Borrower; or
 - (B) a transfer by Borrower into an inter vivo trust in which Borrower is the sole beneficiary and Borrower continues to occupy the Property as a principal residence;

- (C) a transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incidental to such a decree in which one of the Borrowers becomes the sole owner of the Property;
 - (D) a transfer between co-Borrowers.
6. **Share of Appreciation.** On the Maturity Date or on the date of any prepayment under Section 7, the Borrower agrees to repay to Lender the Principal Amount plus the "Share of Appreciation" calculated under this Section 6. The Share of Appreciation is defined as **Thirty One Percent (0.31%)** of the increase in the Fair Market Value of the Property, if any, from the date of Borrower's purchase of the Property through the Maturity Date. The Share of Appreciation has been determined by dividing the Principal Amount by the Fair Market Value of the Property as of the date of this Note, as defined in this Section.
- (i) The Fair Market Value of the Property at the time of the Borrower's purchase of the Property is the greater of the Purchase Price or the Appraised Value of the Property at the time of purchase.
 - (ii) The Fair Market Value of the Property as of the Maturity Date is the greater of the Borrower's sales price of the Property (if applicable) or the Appraised Value of the Property as of the Maturity Date.
 - (iii) The Lender and Borrower may determine the Fair Market Value by mutual agreement, without obtaining an appraisal.
 - (iv) If the Lender and Borrower are unable to agree on a Fair Market Value under Subsection (iii), then the "Appraised Value" of the Property is defined as the value that would be agreed to by a seller who is willing to sell but under no particular or urgent necessity or obligation to sell, and a buyer who is ready, willing and able to buy but under no particular or urgent necessity to buy, each dealing with the other with full knowledge of all the uses and purposes for which the Property is reasonably adaptable and available. For purposes of determining the Appraised Value, the Borrower shall select an appraiser who is an "MAI" member of the American Institute of Real Estate Appraisers or an "SRPA" member of the Society of Real Estate Appraisers (or any such equivalent designations). Lender has the option, at Lender's sole expense, to select an appraiser to conduct an additional appraisal of the Property. If the two appraisals are not in agreement as to the Appraised Value of the Property, the amounts determined by the appraisals will be averaged to determine the Appraised Value of the Property for purposes of this Subsection (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 the Property; Borrower's Loan Application.**
- a. Borrower shall occupy, establish, and use the Property as Borrower's principal residence commencing within sixty 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 principal residence: (2)

14. Subordination. The indebtedness evidenced by this Note, and any other financial obligation which may hereafter be imposed on Borrower by the Lender, is as of the date of this Note subordinate to the indebtedness evidenced by a note in the original principal amount of **\$765,000** payable to **Cash Mortgage**, which note is secured by a first deed of trust on the Property (the "First Deed of Trust"). Any further subordination of this Note to current or future financing secured by a deed of trust on the Property shall be at the sole discretion of the Lender.

15. Sunshine Ordinance. The Borrower understands that under Section 67.24(e) of San Francisco Administrative Code, applications for financing and all other records of communications between the City and the Borrower must be open to public inspection immediately after a contract has been awarded. All information provided by Borrower which is covered by that ordinance (as it may be amended) will be made available to the public upon appropriate request.

Borrower: Joe Smith

Co- Borrower: Jane Smith

Signature

Signature

(ALL SIGNATURES MUST BE NOTARIZED)

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.: Jeanne Lu

Loan No.: **D16-1001-HTF**
APN: Block: **1234 Lot: 567**
Escrow No.: **123456789-CC**
Property Address: **1234 First Street, Unit 567,
San Francisco, CA 94123**

Space above This Line for Recorder's Use

**DEED OF TRUST AND ASSIGNMENT OF RENTS
DOWNPAYMENT ASSISTANCE LOAN PROGRAM (DALP)
Housing Trust Fund (HTF)**

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is made as of _____ by **Joe Smith and Jane Smith** ("Borrower") to **Cash & Carry Title Company** ("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"). This Deed of Trust is being made in accordance with the City's Downpayment Assistance Loan Program, **Housing Trust Fund (HTF)** as described in DALP program policies and procedures.

Borrower owes Lender the principal sum of **Three Hundred Seventy Five Thousand Dollars (\$375,000)**. This debt (the "City Loan") is evidenced by Borrower's 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 (the "First Deed of Trust Loan") from **Cash Mortgage** (the "Senior Lien Holder"), 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 debt 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 Lien Holder under the First Deed of Trust, the real property located in San Francisco County, California, which has the address **1234 First Street, Unit 567, San Francisco, CA 94123** 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 Lien Holder 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. **Payment of Principal and Shared Appreciation: Prepayment and Late Charges.** Borrower shall promptly pay when due all amounts evidenced by the Note. Borrower shall have the right, without any prepayment charge, to prepay the principal amount of the Note, together with the Share of Appreciation, as defined in the Note, provided that such prepayment is in full and not in part.

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 which may attain priority over this Deed of Trust, 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 shall have attained priority over this Deed of Trust 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 holder of the lien 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 attain priority over this Deed of Trust, 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 or moderate 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 Lien Holder 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 Lien Holder'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.

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 Lien Holder; 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 Lien Holder and Lender. Lender may make proof of loss if not made promptly by the Senior Lien Holder 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 Lien Holder 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 principal residence within sixty days after the execution of this Deed of Trust. 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 principal residence; (2) Borrower's income and liquid assets; (3) Borrower's eligibility as a first time homebuyer under the requirements of the DALP (4) Borrower's completion of an approved Homebuyer Education Course, and (5) Borrower's household size and composition.

c. The Borrower acknowledges that this Property is subject to certain use and occupancy restrictions (which may be further evidenced by a separate agreement recorded in the land records where the Property is located), limiting the Property's use to "low and moderate income housing" as described in the DALP Regulations. The use and occupancy restrictions prohibit the Borrower from renting the Property. The violation of any use and occupancy restrictions may, if not prohibited by federal law, entitle the Lender to the remedies provided in Section 21 hereof.

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

a. 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.

b. 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.

c. Prior to taking any actions under this Section 8, however, Lender shall notify the Senior Lien Holder of such default in the manner provided in Section 21, and shall provide the Senior Lien Holder with the opportunity to cure any such default under this Deed of Trust. All amounts advanced by the Senior Lien Holder to cure a default hereunder shall be deemed advanced by the Senior Lien Holder and shall be secured by the First Deed of Trust in accordance with the First 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 Lien Holder 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.

d. 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 Lien Holder 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: At the Property Address in Section 1

To the Senior Lien Holder: **Cash Mortgage
1234 Money Lane
San Francisco, CA 94123**

or such other address as either Lender, Borrower or Senior Lien Holder 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 Lien Holder 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 Lien Holder 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 Lien Holder pursuant to the First Deed of Trust,

the Senior Lien Holder'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 Lien Holder that such remedial action is necessary and shall obtain the Senior Lien Holder'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 Lien Holder 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 Lien Holder, 60 days from the date the notice is given to the Senior Lien Holder), 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 Lien Holder 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 Lien Holder 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 Lien Holder 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 Lien Holder waives, postpones, extends, reduces or modifies any provisions of the First Deed of Trust Loan Documents, including any provisions requiring the payment of money.

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

Borrower: **Joe Smith**

Co-Borrower: **JaneSmith**

Signature

Signature _____

(ALL SIGNATURES MUST BE NOTARIZED)

Exhibit A
Legal Description

SAMPLE

Exhibit B
Attached copy of DALP 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.: Jeanne Lu

Loan No.: **D16-1001-HTF**
APN: Block: **1234 Lot: 567**
Escrow No.: **123456789-CC**
Property Address: **1234 First Street, Unit 567,
San Francisco, CA 94123**

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 **Joe Smith and Jane Smith** AS TRUSTOR, TO **Cash & Carry Title
Company** AS TRUSTEE, IN WHICH **Cash Mortgage** IS NAMED AS BENEFICIAL,

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: _____

DATED: _____

Signature of Joe Smith

Signature of Jane Smith

THIS FORM MUST BE NOTARIZED

SAMPLE