

## **LENDER PARTICIPATION AND SUBORDINATION AGREEMENT**

THIS LENDER PARTICIPATION AND SUBORDINATION AGREEMENT (this “Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_ (“Originating Lender”) and THE CITY OF CHATTANOOGA, TENNESSEE, a Tennessee municipal corporation (the “City”).

### **BACKGROUND:**

A. The City has established the City of Chattanooga Down Payment Assistance Program (the “Program”) to provide forgivable, deferred-payment subordinate loans to income-eligible, first-time homebuyers purchasing primary residences within the City of Chattanooga, Tennessee.

B. Originating Lender is a lender approved by the City to originate first position mortgage loans (each a “First Mortgage Loan”) on behalf of borrowers participating in the Program (each a “Borrower”). Originating Lender wishes to participate in the Program and will be responsible for intake of qualified Borrowers, underwriting, originating, and closing First Mortgage Loans, and ensuring that each Borrower meets all Program eligibility requirements prior to the City’s disbursement of Down Payment Assistance (“DPA”) funds.

C. The City will make a separate, independent subordinate loan (the “DPA Loan”) directly to each eligible Borrower, evidenced by a promissory note (the “DPA Note”) and secured by a subordinate deed of trust (the “Subordinate Deed of Trust”).

D. Originating Lender and the City desire to enter into this Agreement to govern each party’s respective rights with respect to the Program and each DPA Loan made thereunder with Originating Lender as the first mortgage lender.

### **AGREEMENT:**

**NOW THEREFORE**, for and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Participation and Administration.**

(a) Each DPA Loan to a Borrower is a separate, independent, and subordinate loan and does not constitute a loan participation, co-lending arrangement, or any other shared interest in any First Mortgage Loan originated by Originating Lender. Further, this Agreement does not (i) create any interest by the City in any First Mortgage Loan of Originating Lender, (ii) create any interest by Originating Lender in the City’s DPA Loans, or (iii) constitute a sale, assignment, or transfer of any portion of any First Mortgage Loan to the City. THIS AGREEMENT SHALL IN NO WAY BE CONSTRUED AS AN EXTENSION OF CREDIT BY THE CITY TO ORIGINATING LENDER.

(b) The City shall retain all servicing rights with respect to each DPA Loan. Originating Lender has no servicing obligations with respect to any DPA Loan, except that Originating Lender shall, with respect to each DPA Loan:

(i) promptly notify the City in writing upon Originating Lender becoming aware or receiving notice of (A) any default under the corresponding First Mortgage Loan, or (B) the occurrence or anticipated occurrence of any repayment trigger event referenced in the Program Guidelines (as defined herein), including without limitation any pending sale, transfer, or refinance of the subject property;

(ii) at each closing of a DPA Loan-assisted transaction, instruct the closing agent to (A) disburse the DPA Loan proceeds in accordance with the City's closing instructions, and (B) record the Subordinate Deed of Trust immediately behind the security instruments securing the First Mortgage Loan and, if instructed by the City because the Subordinate Deed of Trust will be in third lien position, any second position security instruments;

(iii) upon any repayment trigger event referenced in the Program Guidelines, cause the related DPA Loan balance to be paid directly to the City from sale, refinance, or other proceeds after payment of the First Mortgage Loan; and

(iv) promptly remit to the City any amounts received by Originating Lender that are attributable to a DPA Loan.

2. Subordination. The City agrees that each DPA Loan, DPA Note, and Subordinate Deed of Trust shall at all times be subordinate in right, priority, and payment to Originating Lender's related First Mortgage Loan, including any renewals, extensions, modifications, or refinancings thereof, and the City shall execute any documents reasonably required to evidence such subordination. No payment or distribution of any kind or character, whether in cash, securities, or other property, shall be made on account of a DPA Loan except as expressly permitted by Originating Lender until the related First Mortgage Loan has been indefeasibly paid in full in cash. If the City receives any payment on a DPA Loan in violation of this Section, whether before or after commencement of any insolvency proceeding, such payment shall be held in trust for the benefit of Originating Lender and promptly turned over in kind (or in cash equivalent) to Originating Lender to be applied to the related First Mortgage Loan. The Subordinated Deed of Trust shall be and is hereby subordinated and junior to any lien or security interest securing the related First Mortgage Loan, regardless of the time, manner, or order of attachment or perfection.

3. Program Guidelines; Lender Compliance. The City has adopted written Program Guidelines for the DPA Program, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (as amended from time to time, the "Program Guidelines"). Originating Lender represents, warrants, and agrees that it has received, reviewed, and understands the Program Guidelines, and that for each DPA-assisted transaction, Originating Lender will confirm and verify each Borrower's compliance with the Program Guidelines prior to submission for DPA funding. The City reserves the right to amend the Program Guidelines at any time upon thirty (30) days' written notice to Originating Lender. The version of the Program Guidelines in effect at the time of a Borrower's DPA application shall govern that transaction.

4. Representations and Warranties by Originating Lender. The Originating Lender represents and warrants to the City as follows, as of the date of this Agreement and as of the date of each DPA-assisted transaction:

(a) Document Delivery. Originating Lender has provided, or shall provide prior to DPA disbursement, the following documents to the City for each DPA-assisted transaction: (i) an executed Borrower Application Declaration signed by each Borrower; (ii) documentation required by the City's online Lender Attestation form, which may include, without limitation, pay stubs, tax returns, or other documentation per the Program Guidelines; (iii) a homebuyer education certificate of completion from a THDA-approved provider, dated within twelve (12) months of the anticipated closing date; (iv) evidence of a completed home inspection by a licensed home inspector; (v) evidence of the minimum \$1,000 Borrower contribution from Borrower's own funds towards the purchase of the property secured by Originating Lender's security instrument(s) (not to be sourced from a gift); (vi) a completed online Lender Attestation Form as required by the City; and (vii) any additional documents required by the Program Guidelines.

(b) Compliance with Program Guidelines. Originating Lender has received and reviewed the Program Guidelines and has confirmed and verified each Borrower's compliance with each of the eligibility requirements stated in the then current Program Guidelines prior to submission for DPA funding.

(c) Lender Attestation. Originating Lender has completed the City's online Lender Attestation Form truthfully and completely for each DPA-assisted transaction.

(d) Borrower Declaration. Originating Lender has received an executed Application Declaration signed by the Borrower, has reviewed its contents, and has confirmed Borrower's compliance with the requirements stated therein.

(e) No Known Disqualification. Originating Lender is not aware of any fact, circumstance, or information that would render the Borrower ineligible under the Program Guidelines or that Originating Lender has failed to disclose to the City.

(f) Authority. The individual executing this Agreement and other any agreement, certification, attestation, or document on behalf of the Originating Lender in connection with the DPA Program is duly authorized to do so and has full power and authority to bind the Originating Lender.

(g) Reliance. The City is entitled to rely, without independent verification, on all statements, certifications, submissions, and representations made by the Originating Lender's employees, representatives, loan officers, and other authorized agents in connection with the DPA Program. Such representations shall be deemed to be made on behalf of the Originating Lender and shall be fully binding upon it.

(h) Survival. The representations, warranties, and covenants in this Section shall survive the termination of this Agreement and shall apply separately to each DPA-assisted transaction.

5. Additional Obligations of Originating Lender. With respect to each DPA-assisted transaction, Originating Lender shall:

(a) Origination and Underwriting. Administer the intake, underwriting, approval, closing, disbursement, recording, and post-closing processes solely for qualified Borrowers (as defined by the City) under the Program. The City shall have no underwriting obligations with respect to any Borrower.

(b) Information Sharing. Promptly provide the City with all material information that comes into Originating Lender's knowledge or possession concerning a Borrower, the First Mortgage Loan, or the property securing the First Mortgage Loan and the DPA Loan, including without limitation:

(i) Notice of any default or delinquency under the First Mortgage Loan;

(ii) Notice of any pending foreclosure, bankruptcy, or other proceeding affecting the subject property;

(iii) Notice of any change in Borrower's occupancy status known to Originating Lender;

(iv) Copies of any documents evidencing a repayment trigger event under the Program Guidelines.

(c) No Unauthorized Actions. Not, without the City's prior written consent, seize, sell, transfer, assign, or foreclose upon the Subordinate Deed of Trust or otherwise take any action to impair the City's interest in the DPA Loan or the subject property.

(d) Record Retention. Retain all loan files relating to DPA-assisted transactions for the greater of (i) seven (7) years from the date of closing, or (ii) the term of the DPA Note. Originating Lender shall make such records available to the City upon reasonable notice for audit or review purposes.

(e) Audit Cooperation. Cooperate fully with any federal, state, or City audit or review of the Program or of any DPA-assisted transaction originated by Originating Lender.

6. Default and Remedies.

(a) Originating Lender Default. If Originating Lender fails to perform its obligations under this Agreement (and, if such failure is curable, fails to cure within 30 days after receipt of written notice from the City), the City may, in addition to any other remedies available at law or in equity: (i) terminate this Agreement and Originating Lender's participation in the Program; (ii) refuse to fund any pending or future DPA Loan submissions by Originating Lender; and (iii) seek recovery of DPA funds disbursed in connection with any ineligible transaction.

(b) City Default. If the City fails to perform its obligations under this Agreement (and, if such failure is curable, fails to cure within 30 days after receipt of written notice from Originating Lender), Originating Lender may, in addition to any other remedies available at law or in equity, terminate this Agreement and Originating Lender's participation in the Program.

7. Indemnification. Each party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the other party and its officers, directors, employees, agents, successors, and assigns (collectively, the "Indemnified Party") from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to: (a) the Indemnifying Party's breach of this Agreement; and (b) the negligence, willful misconduct, or unlawful acts of the Indemnifying Party or its personnel.

8. Term and Termination. This Agreement shall be effective as of the date first written above and shall continue until terminated as provided herein. Either party may terminate this Agreement upon thirty (30) days' written notice to the other party or pursuant to Section 6; provided, however, that termination shall not affect the rights and obligations of the parties with respect to DPA Loans already funded prior to the effective date of termination.

9. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and delivered to the receiving party at the addresses set forth below or to any other address designated in writing by the receiving party. Notices may be delivered by personal delivery; nationally recognized overnight courier (with all fees prepaid); certified or registered mail (in each case, return receipt requested, postage prepaid); or email, provided that the sender retains confirmation of transmission.

CITY: City of Chattanooga  
Office of Economic Development  
101 E. 11th Street, Second Floor  
Chattanooga, TN 37402

ORIGINATING LENDER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Miscellaneous.

(a) No amendment, change, modification or termination of this Agreement shall be valid or binding upon the parties hereto unless such amendment, change, modification or termination shall be in writing and signed by all parties hereto.

(b) This Agreement, together with any agreements referenced herein, contains the entire understanding between the parties as to the subject matter hereof and supersedes any prior written or oral agreement respecting the subject matter hereof.

(c) This Agreement shall be governed and construed under the laws of the State of Tennessee.

(d) This Agreement shall be binding upon the parties hereto, as well as their respective legal representatives, successors and assigns.

(e) All notices under this Agreement shall be in writing and mailed to the respective parties at the addresses given herein.

(f) Should any provision of this Agreement be deemed invalid or unenforceable as contrary to applicable law, the parties hereto agree that such provision shall automatically be deemed to be reformed as to be consistent with applicable law.

(g) This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and which together will constitute one and the same document.

**[Signature Page Follows; Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this Agreement as of the date first written above.

**ORIGINATING LENDER:**

\_\_\_\_\_ ,

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY:**

**THE CITY OF  
CHATTANOOGA, TENNESSEE,**  
a Tennessee municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Signature Page to Lender Participation and Subordination Agreement]**

**EXHIBIT “A”**

PROGRAM GUIDELINES

[see attached]