

City of Huntsville  
Downpayment Assistance Program (DAP)

LENDERS INVITATION TO PARTICIPATE

General

The Downpayment Assistance Program (DAP) provides financial assistance in the form of a forgivable second mortgage loan to eligible first-time home buyers. The first or primary loans are available through preferred lenders who provide purchase mortgage financing. The City's funds are provided at closing.

Purpose

The Downpayment Assistance Program provides downpayment and closing cost assistance for the purchase of a principal residence for low and moderated-income individuals/families who are first-time homebuyers.

Goal

The goal of the Downpayment Assistance Program is to increase the homeownership rate of low and moderate-income individual/families in Huntsville, AL.

Borrower Eligibility

Eligible borrower(s) must meet all requirements

- (a). Must be a first-time homebuyer.
- (b). Have an income at or below 80% of the area's median income, adjusted for family size, for the area in which they are purchasing a home as defined by the Department of Housing and Urban Development (HUD).
- (c). You must occupy the property continuously as the primary residence—it cannot be used for business, commercial or rental purposes.
- (d). Complete a free homebuyer education course administered by a HUD approved Housing Counseling Agency.
- (e). Borrower must meet lender standards for creditworthiness with maximum qualifying ratios of 29/41.

Property Eligibility

- (a). Acceptable properties include single-family housing units, condominiums, townhomes and new construction.
- (b). Purchase a home within the Huntsville City limits *(including areas annexed by the City of Huntsville)*.
- (c). Purchase a home with a sales price not to exceed \$150,000.
- (d). The property must meet The City of Huntsville Substandard Housing Code.

City of Huntsville  
Downpayment Assistance Program (DAP)

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The City of Huntsville Department of Community Development has developed and implemented the Downpayment Assistance Program for the City of Huntsville, Alabama in accordance with the rules set forth in HUD's Interim Rule 24 C.F.R, Parts 91 and 92 (collectively hereinafter referred to as the "DAP Regulations").

Mortgage Loans will be originated by "Preferred" Lending Institutions (PLI). The "PLI" will be participating in the Program as originating lenders ("Originators") pursuant to the provisions of an Originator Participation Agreement (the "Agreement").

Reservations of funds will be approved on a loan-by-loan basis under The City of Huntsville Department of Community Development's loan reservation system. See "Reservation System" in the Agreement for a more complete description of the reservation system.

THE AGREEMENT SHOULD BE READ IN ITS ENTIRETY FOR THE DETAILS OF THE PROGRAM. ORIGINATORS SHOULD PAY PARTICULAR ATTENTION TO THE DESCRIPTIONS OF THE RESERVATION OF FUNDS SYSTEM. ALL CAPITALIZED TERMS USED HEREIN SHALL HAVE THE MEANING SPECIFIED IN THE AGREEMENT.

Included below are brief descriptions of the commitment and acceptance procedures for the Downpayment Assistance Program. In addition, there are enclosed herewith the following:

1. Originator Participation Agreement;
2. Originator Questionnaire; and
3. Program Guidelines dated as of August 3, 2009, including appendices.

Each preferred lending institution desiring to participate in the Downpayment Assistance Program as an Originator must present and submit the following to the Department of Community Development:

1. A presentation on how your lending institution will best serve the low to moderate income community.
2. A completed Originator Questionnaire;
3. One copy of your most recent audited financial statements
4. A complete list of attorney's that your institution use for home loan closings; and
5. Two executed Signature Pages of the Agreement.

The material described above should be delivered to the:

City of Huntsville  
Department of Community Development  
P.O. Box 308  
Huntsville, AL 35804

After Community Development has accepted an Originator for participation in the Downpayment Assistance Program, a notice of acceptance will be sent to the accepted institution ("Notice of Acceptance"). The Department of Community Development will not accept requests for reservations of funds from an Originator until the Originator has submitted all of the items described above and has been accepted as an Originator under the Program.

City of Huntsville  
Downpayment Assistance Program (DAP)

LENDERS INVITATION TO PARTICIPATE

The following comprises a description of the Downpayment Assistance Program Guidelines. The City of Huntsville Department of Community Development intends to administer the DAP Program to provide silent second mortgage loans to eligible DAP recipients in accordance with the procedures hereinafter described.

THIS AGREEMENT CONTAINS PROCEDURES AND REQUIREMENTS RELATING TO THE ORIGINATION AND ORIGINATORS OF MORTGAGE LOANS. THIS AGREEMENT AND THESE PROGRAM GUIDELINES SHOULD BE READ IN THEIR ENTIRETY.

1. **Eligible Lending Institutions.** To be accepted for participation as an preferred originating lender (an "Originator") in the Program, lending institutions must meet the following criteria: **(i)** the Originator must have originated single-family residential mortgage loans in the City of Huntsville, AL (such loans having been regularly made to members of the general public and not solely through affiliates of the lending institutions) and be qualified to do business in the State of Alabama; **(ii)** the Originator must have an office in the City of Huntsville, AL for origination of single-family mortgage loans. **(iii)** the Originator must furnish audited financial statements evidencing a net worth of at least \$50,000; **(iv)** the Originator must be an FHA-approved mortgagee, **(v)** the Originator must maintain \$100,000 in Errors and Omissions Coverage; **(vi)** the Originator must maintain Fidelity Bond coverage; **(vii)** in its Originator Questionnaire and other submissions, the Originator must have satisfied the Department of Community Development, based on submitted information, representations and certifications, a presentation of the lending agency abilities to properly carry out its obligations as an Originator under the agreement; **(viii)** the Originator and its parent company, if applicable, must not be on any form of "watch list" or under any program of specified supervision from the FDIC, Federal Home Loan Bank Board, NCUA, or other regulatory bodies. This includes being implicated in any form of litigation involving discrimination or fair housing issues.
2. **Distribution of Funds.** DAP funds will be used for closing cost and down payment assistance to purchase a single-family, owner-occupied, principal residence. The assistance allowed will vary depending on the property location. For target areas the allowable assistance is \$10,000 per loan transaction and \$5,000 for non-target areas (see APPENDIX 1). Community Development will fund each DAP-assisted mortgage, directly at closing.
3. **Eligible Mortgagor Requirements.** To be eligible, a mortgagor must meet the income requirements of "low and moderate-income individuals or families," whose annual incomes do not exceed 80% of the median income for the area as determined by HUD, with adjustments for family size (see Appendix 2). All income received in the household will be counted to determine eligibility regardless of source, taxable or tax-exempt status, or age of wage earner(s).

4. In addition, an eligible mortgagor must be a “first-time homebuyer”, defined as an individual and his or her spouse who have not owned a home during the three-year period prior to purchase.
5. **Eligible Property Requirements.** The DAP Program will be administered in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of the Fair Housing Act, E.O.11063, and HUD Regulations. DAP funds will be limited to single-family detached units, and attached site-built homes that meet all applicable local codes, ordinances, and zoning ordinances. Existing properties must meet City of Huntsville Substandard Housing Code. A Code Enforcement Officer will inspect each property prior to loan closing to ensure these guidelines are met.

Properties located in a designated flood plain will require a flood insurance policy that is escrowed as part of the first mortgage. A flood certification form must be included in all loan submission packages. For properties built prior to 1978, a lead-based paint certification must be included in all submission packages. If properties are identified as having or suspected of having lead-based paint, there must be lead-based paint abatement. DAP funds will not be used to fund the abatement of lead-based paint. 100 percent of DAP assistance will be invested in dwelling units that are owner-occupied by households qualified as low and moderate-income families.

6. **Permitted Encumbrances.** The DAP assistance will be secured as a second or third position mortgage/lien against the principal residence. This mortgage will be subordinate to the first and/or second mortgage used to acquire the property. The DAP assistance will be a non-interest-bearing “silent mortgage” loan forgivable at a rate of 20% per year if the Mortgagor(s) reside in the property as their principal residence (Recapture Provisions—APPENDIX 3). The DAP statute prohibits seller-financed properties.
7. **Eligible Loan Areas.** The eligible loan area shall be the entire geographical limits of the City of Huntsville, AL. (see APPENDIX 1). The DAP program is highly concentrated on the selected target areas and it also gives high regard to the residents and tenants of public housing. This outreach may take the form of housing fairs, newspaper articles and advertisements, brochures and lender training sessions.
8. **Affordability Period.** The DAP assistance provided in this program will be subject to a five-year affordability period, beginning at the execution of the mortgage. The property purchased must be occupied by a homebuyer whose family qualifies as a low to moderate-income family and must remain the principal residence of the homebuyer throughout the five-year affordability period, or Recapture will be imposed (see APPENDIX 3).

The Recapture provision requires that the City of Huntsville Department of Community Development recoup all or a portion of the DAP assistance extended to the homebuyers if (i) the property does not continue to be their principal residence; (ii) if the property is sold, foreclosed or title transferred by deed in lieu of; (iii) the property is rented; or (iv) the homebuyer is found to be in noncompliance with the program during the designated affordability period. The Recapture of DAP funds will be on a reducing prorated basis of 20 percent per completed year, except in instances of non-compliance. If non-compliance is found at any time during the affordability period, one hundred percent (100%) of

the assistance will be recaptured. Recapture will no longer apply at the completion of the fifth year.

9. **Homeownership Counseling.** Each Eligible Mortgagor must complete homeownership counseling prior to the closing of the mortgage loan. The homeownership counseling must be performed by a HUD-approved housing counseling agency (see Appendix 4). The housing counseling agency will be compensated for successful counseling upon closing of the mortgage loan with DAP assistance. The housing counseling agency will receive \$300 upon closing. The homebuyer and seller may not be charged additional fees or expenses for the homeownership counseling.
10. **Record-Keeping.** All qualifying program documents of each file will be kept for five years after the expiration of the affordability period. They will be scanned and saved on a CD, along with a hard copy file kept in the office for review purposes. Sufficient records must be maintained in order to enable HUD to determine whether the Participating Jurisdiction meets all HUD requirements.
11. **Equal Opportunity and Fair Housing.** DAP funds will be available on a first-come, first-served basis to those of all races, ethnic origins, religions, or backgrounds. No homebuyer will be disbarred from the use of DAP funds on the basis of race, religious preferences, ethnic background, or household type. The qualifying parameters for the program will be the same for all households or homebuyers.

City of Huntsville  
Downpayment Assistance Program (DAP)

**ORIGINATOR PARTICIPATION AGREEMENT**

THIS AGREEMENT DATED \_\_\_\_ day of \_\_\_\_\_, 2009 is between the City of Huntsville Department of Community Development and

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Hereinafter referred to as the Originator.

The Downpayment Assistance Program (DAP) is a federally funded housing program established as an offspring of the Cranston-Gonzalez National Affordable Housing Act (the "Act"). Under guidelines from the United States Department of Housing and Urban Development (HUD), DAP is designed for the purpose of making downpayment assistance available to low-income families who are first-time homebuyers for the purchase of single family housing that will serve as the family's principal residence. The Department of Community Development will administer this funding initiative for the City of Huntsville, AL These DAP guidelines were developed under HUD's Interim Rule (24 C.F.R. Parts 91 and 92).

**ARTICLE I  
DEFINITIONS**

The following words and phrases shall have the following meanings:

**Act:** The Cranston-Gonzalez National Affordable Housing Act passed in November 1990. This Act contains the provisions for the HOME Program and subsequently the DAP components and is further defined in 24 C.F.R. Part 92.

**DAP:** The Downpayment Assistance Program is an offspring of the American Dream Downpayment Initiative made possible by the American Dream Downpayment Act signed by the President on December 16, 2003.

**DAP Assistance:** Term given to the forgivable mortgage of \$10,000 made available to first-time homebuyers who decide to purchase within the *targeted* areas or a forgivable mortgage of \$5,000 made available to first-time homebuyers who decide to purchase within the non-targeted areas.

**DAP Regulations:** U.S. Department of Housing and Urban Development (HUD) requirements for the DAP program, defined in HUD's Interim Rule 24 C.F.R. Parts 91 and 92.

**Affordability Period:** A period of five years from the acquisition of the Principal Residence during which time the property must remain owner-occupied. During this period, the mortgagor would be subject to Recapture.

**Annual Family Income:** The current annualized family income as determined in accordance with the DAP Regulations and the guidelines provided by The City of Huntsville Department of Community Development.

**Commitment Period:** A period not to exceed *six months* from the date that Community Development extends a commitment to the Originator as a DAP-eligible mortgagor.

**Eligible Mortgagor:** An individual who: (1) meets the income requirements of “low-income families; and (2) is a first-time homebuyer.

**First-Time Homebuyer:** An individual and his or her spouse who have not owned a home during the three-year period prior to purchase. Also includes an individual who is a Displaced Homemaker or Single Parent and who, even if while a homemaker or married, owned a home with his or her spouse or resided in a home owned by the spouse.

**Homebuyer Agreement:** The document signed by the homebuyer(s) and Originator indicating compliance with program guidelines.

**Low Income:** Families whose annual incomes do not exceed 80 percent of the median income for the area as determined by HUD, with adjustments for family size.

**Maximum Sales Price:** The loan limit for the City of Huntsville as a whole is \$150,000.

**Originator:** The lending institutions executing this agreement and accepted by the Department of Community Development to participate as a preferred Originator in the DAP Program.

**Originator Participation Agreement:** The Origination Agreement is among the Originator(s) and the City of Huntsville Department of Community Development.

**Participating Jurisdiction:** A state or local unit of government, which has met the requirements set forth by HUD. This unit of government will receive an appropriation of funds to be used within its jurisdictional boundary.

**Principal Residence:** A residence which, in accordance with federal law, in view of all the facts and circumstances of each case, including good faith of the proposed Mortgagor **(i)** has not been used by the preferred Mortgagor or is not primarily intended by the preferred Mortgagor to be used in a trade or business; or **(ii)** has not been or is not to be used by the preferred Mortgagor as an investment property or as a recreational home. If more than ten percent (10%) of the total area of a residence has been used by the proposed Mortgagor or is reasonably expected to be used primarily in a trade or business, then such a residence shall be deemed to be used in a trade or business.

**Recapture:** Repayment of the DAP Assistance required if the Principal Residence is sold, foreclosed, or transferred by deed-in-lieu or if the property is rented or found to be in non-compliance during the affordability period.

**Recapture Mortgage:** The instrument securing a mortgage loan which creates a lien on a residence subject only to permitted encumbrances.

**Recapture Mortgage Note:** The promissory note evidencing the obligation to repay a mortgage loan with recapture provisions and an affordability period.

**Single-Family Housing:** A one to four-family residence, condominium unit or townhomes.

## **ARTICLE II REPRESENTATIONS**

**Section 2.00.** *Representations, Warranties and Covenants by Community Development.* The City of Huntsville Department of Community Development represents and warrants to, and covenants with the Originator that:

- a. The City of Huntsville Department of Community Development is a public body, corporate and political. Community Development is authorized to promulgate and execute this Agreement.
- b. Community Development has complied with all of the provisions of the Constitution and laws of City and State, and has full power and authority to consummate all transactions contemplated by this Agreement and any and all other agreements, documents and instruments relating thereto.

**Section 2.01.** *Representations, Warranties, and Covenants of Originators.* The Originator represents and warrants to, and covenants with The City of Huntsville Department of Community Development that:

- a. The Originator is a corporation duly organized and existing under the laws of City and State of incorporation, or is duly chartered or incorporated under federal law, is duly authorized to transact business in the State of Alabama, and customarily provides service or otherwise aids in financing loans on Principal Residences located in the State of Alabama.
- b. During the term of this Agreement, the Preferred Originator will remain subject to supervision and examination by the Department of Community Development. The preferred Originator shall remain in good standing and qualified to do business under the laws of the United States of America, the State of Alabama and the City of Huntsville
- c. The Preferred Originator will indemnify and hold harmless the Department of Community Development, its director, employees and agents against liability from all claims, causes of action, costs and expenses (including attorneys fees), judgments or appeals thereof and fines and penalties that may be related to or arise out of any act or omission of the Preferred Originator or any violation of law resulting from an act or omission of the Originator hereunder.

**Section 2.02.** *Survival of Representations and Warranties.* It is understood and agreed that the representations, warranties and covenants set forth in this Agreement shall survive the origination of loans by the Preferred Originator, and that such representations, warranties and covenants shall insure the transferees and assignees of Community Development. Upon discovery by the Preferred Originator of the breach of any of such representations, warranties and covenants which materially and adversely affects the validity of any DAP-assisted loan, the Preferred Originator shall give prompt written notice to the Department of Community Development and take such other action as may be required hereunder.

### ARTICLE III DISTRIBUTION OF FUNDS

**SECTION 3.00. *Commitment to Distribute Funds.*** The Department of Community Development hereby agrees to distribute the DAP funds Assistance in accordance with this Agreement and the terms of the applicable Invitation, DAP regulations and program guidelines.

**SECTION 3.01. *Loan Terms.*** DAP Assistance may be issued only with respect to Loans made to eligible borrower(s) and families for the purpose of providing assistance for the purchase of a Single-Family Residence, and NOT for the purpose of refinancing any existing loan.

**SECTION 3.02. *Independent Verifications by Originator.*** The Originator must undertake the certification procedures described in this Section to determine with respect to each loan that:

- a. The residence is a Principal Residence and that the Borrower occupies or will occupy the Principal Residence within sixty (60) days from the date of closing and thereafter intends to maintain the property as his or her Principal Residence. The Preferred Originator must require the Borrower to examine and execute the Homebuyer Agreement.
- b. Each Borrower must be a First-Time Home Buyer. The Preferred Originator must obtain from each Borrower the Homebuyer Agreement and Certifications, and, in addition, copies of the Borrower's dated and signed tax returns/income verification which were filed with the Internal Revenue Service for the prior year and/or valid check stubs.
- c. The Maximum Sales Price Limit stated in the Homebuyer Agreement is not to exceed \$150,000. The Preferred Originator must examine such documents and must review a copy of the contract of sale to ascertain that the purchase price is within those limits.
- d. No part of the loan proceeds are used to acquire or replace an existing loan under which the Borrower is the debtor, and the loan must be made to persons who did not have a loan (whether or not paid off) with respect to the residence securing the Note at any time prior to the execution of the Note.
- e. The Borrower has successfully completed an HUD-approved homeownership counseling program (see APPENDIX 4).

**SECTION 3.03. *Origination Fees and Closing Costs.*** In connection with each Loan, the Preferred Originator may charge and collect from the Borrower and the Seller of a Principal Residence only the following fees provided they are reasonable:

- a. Points, origination fees, servicing fees, and other fees in amounts that are customarily charged with respect to the first mortgage loan;
- b. Application fees, survey fees, credit report fees, insurance fees or similar settlement or financing costs.

- c. Amounts charged for FHA, VA, Conventional or similar private mortgage insurance on an individual's first mortgage are permissible so long as such amounts do not exceed the amounts charged in the area.
- d. In the case of a DAP assisted loan, half of the allocated assistance can be used to cover prepaids and closing cost.

**SECTION 3.04. *Purchase Price of a Residence.*** The Purchase Price of a residence cannot exceed the applicable Maximum Sales Price Limit of \$150,000. The Purchase Price of a residence is the cost of acquiring the residence from the seller as a completed residence.

**SECTION 3.05. *First-Time Home Buyer.*** All Borrowers and Co-Borrowers must occupy the property as their primary residence and meet the first-time homebuyer requirements of the DAP regulations.

**SECTION 3.06. *Income Limits.*** To qualify as Eligible Borrowers and Families, such person or persons must have an aggregate Annual Family Income, determined in accordance with the DAP regulations and procedures provided by the Department of Housing and Urban Development. (see APPENDIX 2).

**SECTION 3.07. *Assumptions.*** DAP mortgages MAY NOT be assumed, reissued, transferred or assigned.

**SECTION 3.08. *Inspection.*** Once the Department of Community Development has issued a Conditional Commitment and the Preferred Originator has issued its final loan approval, an inspection will be ordered by the Code Enforcement Division of Community Development to ensure the property has met all local codes. In the case of a new construction there will be no inspection required.

**SECTION 3.09. *Procedure for Requesting DAP Assistance.*** Once the DAP Assistance is approved by the Department of Community Development, the Preferred Originator will request a check for the DAP Assistance five (5) days prior to closing by faxing the DAP Check Request Form (Appendix 4). Community Development will issue the check in accordance with DAP Regulations. The loan must close within 14 days of the issuance date of the check, or the check will become null and void.

**SECTION 3.10. *Loan Reservation System.***

**SECTION 3.11. *Allocation of DAP Assistance.*** The Department of Community Development will issue a limited amount of DAP Assistance as specified in the Invitation. DAP Assistance will be issued on a first-come, first-served basis in the following manner.

- 3. ***Normal Procedure.*** Community Development will process applications in the order that they are received. If the application package is complete and in compliance with the provisions of DAP regulations and the applicable Invitation, Community Development will issue DAP Assistance as requested. An incomplete application will not be considered or processed until it is completed.

Prior to making a reservation of funds, the Originator must have taken a mortgage loan application from a potential eligible mortgagor. The mortgagor furnishes the Preferred Originator an earnest money sales

agreement or construction contract entered into by the seller/builder of a residence and the Eligible Mortgagor. The Preferred Originators are responsible for making a preliminary determination to see if the potential Eligible Mortgagor will qualify for the mortgage loan and the DAP Assistance. The program processing is designed to compliment the Preferred Originator's regular credit and underwriting procedures.

Since Community Development is not part of the credit approval process, no formal notice of rejection of the DAP Assistance is required by the Department of Community Development under the Equal Credit Opportunity Act. Community Development recognizes the procedural variations among participating Preferred Originators.

The following steps are for the loan processing process:

1. The eligible mortgagor applies for mortgage financing from a participating Preferred Originator.
2. The Preferred Originator determines if a loan applicant is eligible for the DAP program based on preliminary information obtained on annual income, prior home ownership, and other factors.
3. All first mortgage loans must be originated in compliance with, and must conform to the provisions of all applicable rules, regulations and limitations of FHA, VA, RD, GNMA, and Fannie Mae, as appropriate.

**SECTION 3.11. *Representations, Warranties and Covenants of Originator Concerning Loans.*** The Preferred Originator hereby represents and warrants to and covenants with the Department of Community Development that:

- a. The information set forth in each document submitted will be true and correct before the closing date thereof and each loan satisfies all applicable requirements set forth herein;
- b. Each loan, at the time it was made, shall have conformed to all disclosures required to be made by the Real Estate Settlement Procedures Act, the Truth-in-Lending Act, and the Consumer Credit Protection Act and all other applicable State and federal laws and regulations;
- c. The Preferred Originator shall use its best efforts to secure DAP Assistance on behalf of Eligible Borrowers.

**SECTION 3.12. *Prohibition of Discrimination.*** The Preferred Originator must consider all applications in the order in which they are received or in any other manner designated or approved by Community Development on a fair and equal basis. The Preferred Originator must not arbitrarily reject a loan application because of the location, and/or age of the property, and may not, in the case of a proposed Borrower, arbitrarily vary the terms of a loan or the application procedures therefore or reject a loan applicant because of the race, color, religion, national origin, sex or marital status of such applicant. The Preferred Originator shall not directly or indirectly attempt to prohibit a Borrower from seeking financing from any particular Originator.

**SECTION 3.13. *Necessary Action and Remedies.*** In the event that a loan is not performed in a timely manner or is handled incorrectly by the Preferred Originator, and in the continuance of any such non-action, is deemed not in the best interests of the

City of Huntsville Department of Community Development. Community Development shall promptly undertake the proper and necessary measurements to terminate this Agreement. If such termination results from any failure of the Preferred Originator to comply with the conditions and terms hereof, the Originator will become ineligible for subsequent participation in any housing program of the City of Huntsville Department of Community Development.

**ARTICLE IV  
MISCELLANEOUS PROVISIONS**

**SECTION 4.00.** *Access to Certain Documents and Certain Information Regarding the Loans.* The Preferred Originator shall provide to the Department of Community Development and its examiners and supervisory agents access to the documentation regarding the loans as it relates to Eligible Borrowers participating in the DAP program. Such access should be afforded without charge but only upon reasonable request and during normal business hours at the offices of the Preferred Originators.

**SECTION 4.01.** *Discretion of Community Development.* With respect to any disputes between Community Development and the Preferred Originator which arise concerning the terms and provisions of this agreement, the judgment of the Department of Community Development shall govern.

**SECTION 4.02.** *Changes in Organization.* The Preferred Originator shall immediately notify Community Development of any contemplated material change in its organization including but not limited to, mergers or consolidations, change of name, or corporate charter. The Preferred Originator shall immediately notify Community Development of any voluntary or involuntary preceding which might result in bankruptcy, reorganization, dissolution, liquidation or the Preferred Originator having its activities restricted in any manner related to its performance of material obligations.

**SECTION 4.03.** *Amendments.* Amendments to this Agreement may be made upon the written agreement of the parties hereto.

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**IN WITNESS WHEREOF**, the parties hereto have caused this DAP Preferred Originator Participation Agreement to be duly executed by their duly authorized officers or representatives as of

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(DATE)

**CITY OF HUNTSVILLE  
DEPARTMENT OF COMMUNITY DEVELOPMENT**

By: -----  
Director

-----  
Originator

-----  
Preferred Originator Representative  
City of Huntsville  
Downpayment Assistance Program (DAP)

**ORIGINATOR QUESTIONNAIRE**

**PART I**

**GENERAL INFORMATION**

1. Legal name of Institution: -----

2. Jurisdiction of organization and date of incorporation: -----

Form of Organization:

National Banking Association                       State Chartered Savings & Loan

State Banking Corporation                       Mortgage Banker

Federally Chartered Savings & Loan                       Credit Union

Other (Specify): -----

3. Date of qualification to do business in the State of Alabama: -----

a. Have you originated single-family residential loans in the State for a minimum of twelve consecutive months prior to the execution of the DAP Preferred Originators Participation Agreement?

Yes

No

4. Address and telephone number of principal office:

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5. Name, title, telephone number, fax number and email address of person to whom correspondence adhere with regard to the DAP program: -----

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6. A copy of the most recent fiscal year end financial statement is to be enclosed with this questionnaire. Are your financial statements audited?

Yes

No

By whom: (Name and Address): \_\_\_\_\_

\_\_\_\_\_  
Please indicate whether you are, or have received notice or knowledge that you are,  
on any form of "watch list" or under any program of a specified regulatory body:

Yes

No

If "Yes," please indicate the name of the regulatory body involved, the address, telephone  
number and contact person: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City of Huntsville  
Downpayment Assistance Program

**ORIGINATOR QUESTIONNAIRE  
PART II  
GENERAL FINANCIAL STATISTICS**

NAME OF INSTITUTION: \_\_\_\_\_

FISCAL YEAR 20\_\_\_\_

- A. Please provide the following information if your institution is a savings and loan association:

	TOTAL
Profit (Loss), year to date	
Total assets	
Conventional mortgage loans	
FHA-VA-RD mortgage loans	
Deposits	
Savings Capital	
Advances (Federal Home Loan Bank)	
Other borrowed money	
Net worth	

- B. Please provide the following information if your institution is a savings or commercial bank:

	TOTAL
Profit (Loss), year to date	
Total assets	
Conventional mortgage loans	
FHA-VA-RD mortgage loans	
Cash	
Total capital accounts	
Total deposits	
Total capital notes and long-term debt outstanding	
Net worth (capital, surplus, UP&R)	

- C. Please provide the following information if your institution is a mortgage broker/company or mortgage banker:

	TOTAL
Profit (Loss), year to date	
Total assets	
Conventional mortgage loans*	
FHA-VA-RD mortgage loans*	
U.S. Government Obligations	
Total capital accounts	
Construction and development loans	

(nets of possible losses)	
Foreclosed properties	
Net worth	

\*Held for resale

CERTIFICATION STATEMENT

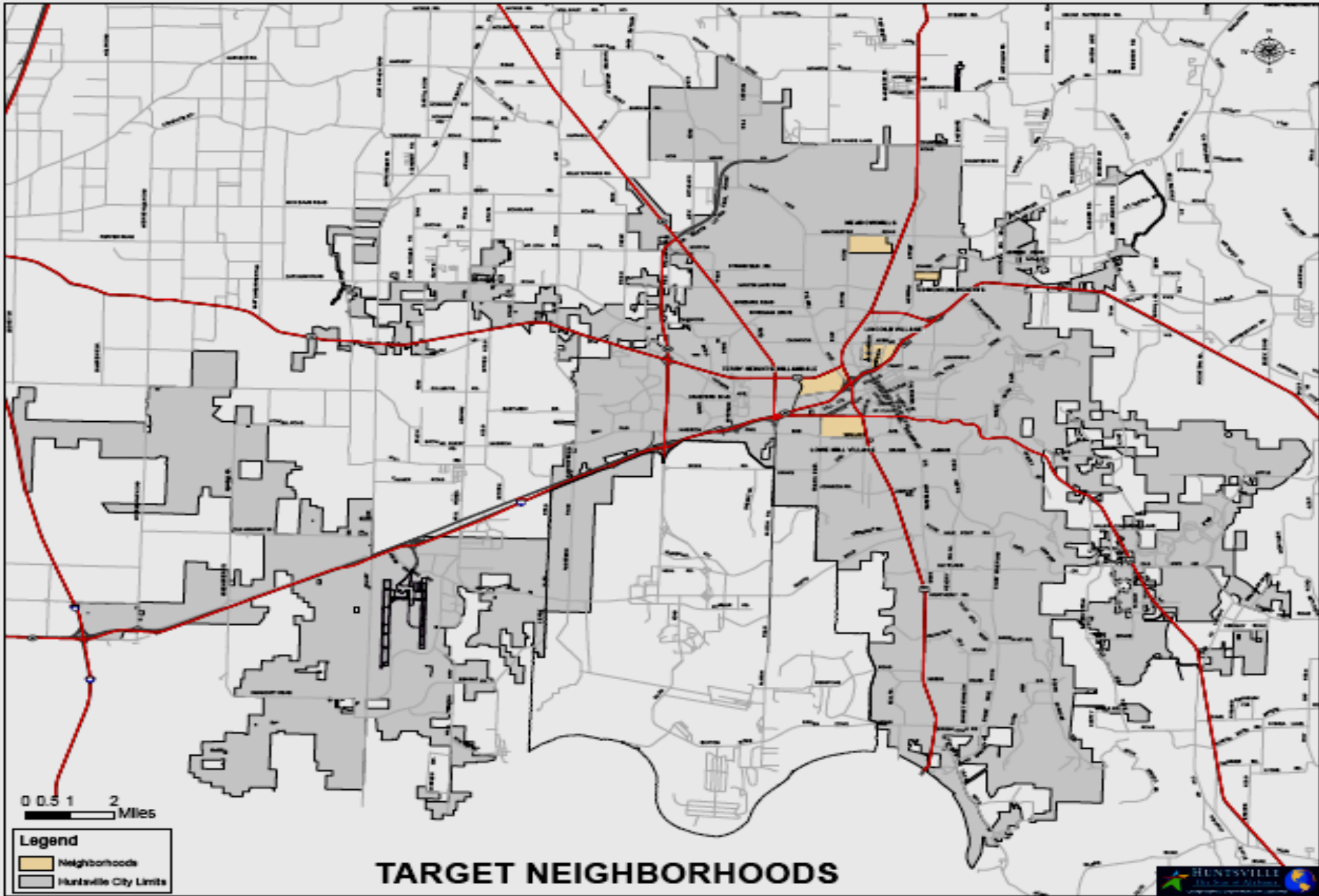
It is understood that the information contained in this Preferred Originator Questionnaire may be used by the Department of Community Development, along with other factors and information (including any data furnished by the undersigned in connection with prior programs of the Authority), in approving Preferred Originators for the Program. We hereby authorize such use and certify to the best of our information, belief and knowledge, that the information presented in this Originator Questionnaire is true and accurate to the extent possible give available misrepresented in this Preferred Originator Questionnaire, Community Development shall have the right to modify or terminate our participation in its DAP Program. We further certify that as of the date hereof there is no aspect of our financial condition or operations that could reasonably be expected to adversely affect our ability to perform our obligations to the Department of Community Development under DAP Preferred Originator Participation Agreement applicable to the DAP Program.

Institution: \_\_\_\_\_  
 (Legal Name)

Signed: \_\_\_\_\_  
 (Name of Authorized Officer)

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

Date: \_\_\_\_\_



\*\*\*Target Neighborhoods include: Edmonton Heights, Lincoln Village, Lowe Mill Village, Meadow Hills, Terry Heights/Hillandale\*\*\*

HUD Publication Date: 3-10-2009

**INCOME LIMITS for the CITY OF HUNTSVILLE**

<b>INCOME LIMITS</b>	<b>1 PERSON</b>	<b>2 PERSONS</b>	<b>3 PERSONS</b>	<b>4 PERSONS</b>	<b>5 PERSONS</b>	<b>6 PERSONS</b>	<b>7 PERSONS</b>	<b>8 PERSONS</b>
EXTREMELY LOW 0% to 30%	\$14,200 or below	\$16,200 or below	\$18,250 or below	\$20,250 or below	\$21,850 or below	\$23,500 or below	\$25,100 or below	\$26,750 or below
LOW INCOME 31% to 50%	\$14,201 to \$23,650	\$16,201 to \$27,000	\$18,251 to \$30,400	\$20,251 to \$33,750	\$21,851 to \$36,450	\$23,501 to \$39,150	\$25,101 to \$41,850	\$26,751 to \$44,550
MODERATE INCOME 51% to 80%	\$23,651 to \$37,800	\$27,001 to \$43,200	\$30,401 to \$48,600	\$33,751 to \$54,000	\$36,451 to \$58,300	\$39,151 to \$62,650	\$41,851 to \$66,950	\$44,551 to \$71,300

Limits are based on the Median Family Income for **\$67,500**  
Source: HUD Housing & Urban Development

## **PROVISION OF THE RECAPTURE NOTE and MORTGAGE**

The person or persons who sign this Note are called "the Borrower." The Borrower has received downpayment assistance from the CITY OF HUNTSVILLE, ALABAMA, acting by and through the Department of Community Development ("CITY"). The CITY has furnished the Downpayment Assistance to the Borrower under the laws and regulations that govern the Downpayment Assistance Program of the United States Department of Housing and Urban Development's. If the Borrower wants to look at the Downpayment Assistance Regulations, they can be located at 24 C.F.R Parts 91 and 92.

The Note requires the Borrower to do certain things in order to receive the downpayment assistance. By signing the Note, the Borrower agrees to do those things. The Note requires the Borrower to repay some or all of the Downpayment Assistance funds if Borrower does not do the things required by this Note.

In order to receive the Downpayment Assistance, the Borrower is also signing a Recapture Mortgage (the "Recapture Mortgage") and a Homebuyer's Agreement (the Homebuyer's Agreement"). The Note, the Recapture Mortgage, and the Homebuyer's Agreement will be called, all together, the "Downpayment Assistance Documents".

**SECURITY FOR THIS NOTE**-As security for the Borrower's obligation to pay the amounts due under this Note and to perform the promises contained in this Note, the Borrower is signing and delivering a Recapture Mortgage in favor of the CITY. The Recapture Mortgage grants to the CITY a mortgage lien and security interest in the land, buildings and improvements that were purchased, in part, with the Downpayment Assistance Program (all together, the "Property"). The Property is described in more detail in the Recapture Mortgage.

### **I. BORROWER'S OBLIGATIONS**

- a. The Borrower agrees that he/she received the Downpayment Assistance funds in an amount equal to the principal amount of this Note.
- b. No interest shall be charged on the Downpayment Assistance funds under this Note.
- c. The Borrower understands and agrees that the Property must be owned and occupied by an "eligible household" for a period of five (5) calendar years after the date of this Note (the "Affordability Period"). This is required by the Downpayment Assistance Regulations. An "eligible household" is a household (which means the person or persons occupying the Property) that meets all of the following requirements:
  - a. The household's total annual income does not exceed eighty percent (80%) of the median income for the area in which the Property is located;
  - b. The purchase price for the Property does not exceed \$150,000 purchase price; and
  - c. The household qualifies as a first-time homebuyer as defined in §24C.F.R 92.2 Interim Rule. All other definitions of terms shall be in accordance with the definitions provided in the Downpayment Assistance Regulations.

- d. The CITY is providing the Downpayment Assistance to Borrower in the form of a loan. The loan does not bear interest. If the Borrower does the things required in this Note, the Borrower will not have to repay the loan. Instead, the CITY will forgive the loan in equal parts over five years. If the Borrower does not do the things required in this Note, the CITY will require the Borrower to repay some or all of the Downpayment Assistance. Listed below are the terms:
- a. **A portion of this note will be forgiven for each complete year that the Borrower meets all Downpayment Assistance Program Requirements.** If no Prorated Recapture Event or Full Recapture Event has happened, as described below, and the CITY has not already accelerated the amounts due under this Note or otherwise exercised its remedies under the Downpayment Assistance Program. In the case where the Borrower selects a property in the selected Target area, the principal amount of this Note shall be deemed paid in the amount of \$2,000 for each complete calendar year, calculated from the date of this Note. If the Borrower selects a property in the Non-Target area, the principal amount of this Note shall be deemed paid in the amount of \$1,000 for each complete calendar year. The Property has to be used in accordance with the provisions of the Downpayment Assistance Program Regulations. No partial forgiveness will be allowed for any year in which a Prorated Recapture Event or Full Recapture Event occurs.
  - b. **This note will be forgiven in full if Borrower meets all Downpayment Assistance requirements for the entire affordable period of five (5) years.** If the Borrower uses the Property in accordance with the provisions of the Downpayment Assistance Program for the entire Affordability Period, this Note will be deemed satisfied in full and Borrower shall be entitled to require the CITY to release the Recapture Mortgage from the Property.
  - c. **This note must be repaid in part if a prorated Recapture Event happens.** If a Prorated Recapture Event happens, then this Note shall become immediately due and payable in the full amount of the Downpayment Assistance, less any amounts already deemed paid under Section 2.D.a. of this Note. A "Prorated Recapture Event" means: (i) a sale, foreclosure or transfer in lieu of foreclosure of the Property occurring prior to the end of the Affordability Period; or (ii) if the Borrower ceases to occupy the Property for any reason prior to the end of the Affordability Period. Amounts due to CITY following a Prorated Recapture Event must be paid from any net gain realized from any sale or disposition of the Property, after deduction for sales expenses.
  - d. **This note must be repaid in Full if a Full Recapture Event Happens.** If a Full Recapture Event happens, then this Note shall become immediately due and payable in an amount equal to one hundred percent (100%) of the Downpayment Assistance. A "Full Recapture Event" means that the Borrower is not complying with the Downpayment Assistance Requirements or the Property is not being used in the ways required by the DAP Program (for reasons other than a Prorated Recapture Event) at any time during the Affordability Period. Amounts due to CITY following a Full Recapture Event must be paid from any net gain realized from any sale or disposition of the Property after deduction for sales expenses.

- e. The Borrower must notify the CITY in writing not less than 30 days before the occurrence of any Prorated Recapture Event or Full Recapture Event. The Borrower will send this notice to the:

**City of Huntsville  
Department of Community Development  
P.O. Box 308, Huntsville, Alabama 35804,  
Attention: DAP Program**

- f. The Downpayment Assistance Program Documents and the related documents that the Borrower has signed or may sign in connection with the Downpayment Assistance Program have been or will be signed willingly and properly by the Borrower. The Borrower understands that those documents are, or when signed, will be valid and legally binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms.
- g. **Applicable Law and Severability-** This Note shall be governed by the laws of the United States and, to the extent federal law adopts or defers to state law the laws of the State of Alabama (however, excluding the conflict of laws of such state). The provisions of this Note are severable which means that if any part of this Note conflicts with applicable law the other parts of this Note that can be given effect without the conflicting provision will still be in effect.
- h. **No Waiver of Rights; Amendments-** No action by CITY or failure to act by the CITY shall mean that the CITY has waived any of its rights or remedies under this Note unless such waiver is in writing and signed by the CITY. No delay, mistake or failure by the CITY in exercising any of the City's rights under this Note or under any other Downpayment Assistance Program documents shall be viewed as changing. Agreeing to new terms for the Downpayment Assistance Program, or waiving or preventing CITY from later exercising any or all of its rights under the DAP program. To the full extent not prohibited by law, the Borrower expressly waives the benefit of any statute or rule of law or equity that would produce a different result. No extension of the time for the payment of this Note or any installment due hereunder made by agreement with any person now or later 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, unless CITY agrees otherwise in writing.
- i. **Time is of Essence-** it is essential that the Borrower complies with all of the terms, provisions, and conditions of this Note on the dates and at the times required under this Note.
- j. **Grant of Mortgage Lien and Security Interest.** As security for the Borrower's payment obligations and other promises under the said Mortgage and the Note, the Borrower grants bargains sells and conveys to the CITY a mortgage and security interest in the said property.

## **II. BORROWERS REPRESENTATIONS**

- I. The Borrower confirms to the CITY that the Borrower lawfully owns the Property and rights that are pledged to CITY under the mortgage that the Borrower has the right to pledge all of the Property to CITY and that the Property is not subject to any liens, easements or other encumbrances, except those already recorded against the Property on the date of the mortgage. The Borrower agrees to protect

and defend CITY rights to the Property against anyone else who tries to claim rights against the Property, except those claiming under the first lien mortgage described in Section XII or under other items already recorded against the Property on the date of the mortgage.

**III. BORROWER'S PROMISE-**In consideration for the benefits received as afore said, the Borrower agrees as follows:

- a. The Borrower understands that the Property is subject to the mortgage and must be used in ways that meet the requirements of the Downpayment Assistance Program Regulations. The Borrower has executed the Note and a Homebuyer's Agreement between the Borrower and CITY (the "Homebuyer's Agreement") that contain those restrictions.
- b. The Borrower agrees to do everything that is required by the Note, the Homebuyer's Agreement and the mortgage (all together, the "Downpayment Assistance Program Documents"). If the Borrower fails to do those things, the Borrower agrees that it must repay to CITY some or all of the Downpayment Assistance funds. If that happens, the CITY will refer to the Note to determine the amount of Downpayment Assistance funds the Borrower must repay to the CITY.
- c. The Borrower shall pay when due all liens, taxes, assessments and other governmental charges made against the Property. Any money that the Borrower spends for taxes or any other purposes on the property do not count toward reduction or repayment of the Downpayment Assistance. The Downpayment Assistance funds may be paid or reduced only as permitted under the Note.
- d. The Borrower shall keep the Property in good repair and will not damage or abandon it, except for normal wear and tear. The Borrower will allow the CITY or its authorized representative to inspect the Property upon reasonable notice.
- e. The Borrower shall use the Property in compliance with all applicable laws, ordinances and other requirements of any governmental authority.
- f. The Borrower shall keep the Property insured against fire and other casualty (including flood insurance if Property is in a designated flood zone) in an amount acceptable to CITY. The insurance policies for the Property must name CITY as a mortgagee, loss payee and additional insured thereon, as its interest may appear.

**IV. Rights Given to the City-** The Borrower, by giving the Mortgage on the Property to CITY, gives to CITY those rights described in the mortgage and all rights given by law to persons who hold mortgages in the State of Alabama" but subject to any limits or requirements created by the DAP Program. The rights given to the CITY and the restrictions upon the Property are covenants running with the land. The rights, terms, and restrictions in the mortgage shall bind the Borrower and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in the Note and Mortgage, the CITY will cancel the mortgage at its expense.

**V. Default-** The CITY may declare the Borrower in default under the mortgage if:

- a. The Borrower fails to comply with the provisions of the Note.

- b. The Borrower fails to make any recapture payment required by the Note or the Mortgage.
- c. The Borrower fails to keep any other promises made in the Mortgage;
- d. The Borrower sells or transfers the Property to anyone else for any reason without compliance with the terms of the Note and the mortgage.
- e. The Borrower fails to comply with the terms of any other note or mortgage on the Property;
- f. The holder of any lien on the Property starts to foreclose on the Property or bankruptcy, insolvency, or receivership proceedings are started by or against the Borrower.

**VI. Each Person Liable-**The Mortgage is legally binding upon the Borrower and all who succeed to the Borrower's responsibilities (such as heirs and executors) as well as any subsequent owner or purchaser of the Property, CITY may enforce any of the provisions of the Note and the Mortgage against any Borrower who signs the Mortgage or against any subsequent purchaser or owner of the Property.

**VII. Subordinate Mortgage-** The lien of the Mortgage is subordinate to and subject only to the terms and provisions of any first lien mortgage used to buy the Property and that is signed at the same time or before the mortgage, including any subsequent refinancing of said first lien mortgage loan by the Borrower. The mortgage is also subordinate and subject to any other prior lien approved in advance in writing by CITY.

**VIII. No Oral Changes-**The Mortgage can be changed only by a written agreement signed by both the Borrower and CITY.

HUD-APPROVED HOUSING COUNSELING AGENCIES

<p>Alabama A&amp;M University Community Development Corporation 117 Wholesale Avenue Huntsville, AL 35811 Contact Person: Sandra Tibbs (256) 288-0774</p>
<p>Community Action Partnership 3516 Stringfield Road Huntsville, AL 35810 Contact Person: Toney Pitts (256) 851-9800</p>
<p>Family Services Center, Inc. 600 St. Clair Avenue Bldg. 3 Huntsville, AL 35801 Contact Person: Dave Dougherty (256) 551-1610</p>

City of Huntsville  
Downpayment Assistance Program

**REQUEST for FUNDS**

TO: THE CITY OF HUNTSVILLE DEPARTMENT OF COMMUNITY DEVELOPMENT

FAX #: (256) 427-5431

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

RE: Downpayment Assistance Recovery Program

DATE: \_\_\_\_\_

MORTGAGOR'S NAME: \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_

CHECK MADE

PAYABLE TO:

(Closing Attorney's Name and Address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DOWN PAYMENT ASSISTANCE AMOUNT: \$ \_\_\_\_\_

DEPARTMENT OF COMMUNITY DEVELOPMENT USE ONLY
APPROVED BY: _____
DATE: _____
DAP/IDIS COMMITMENT #: _____