

U.S. BANK PARTICIPATING LENDER AGREEMENT

This Participating Lender Agreement (this “Agreement”), entered into and effective as of this _____ day of _____, 20____ (“Effective Date”), by and between U.S. Bank National Association (“U.S. Bank”), having an office located at 17500 Rockside Road Bedford, Ohio, 44146 and _____ (“Lender”) having its principal office located at _____.

Recitals

From time to time pursuant to this Agreement and a HFA program, Lender shall sell and U.S. Bank shall buy Mortgage Loans. This Agreement shall govern the sale and transfer of each Mortgage Loan by Lender to U.S. Bank and each such Mortgage Loan shall be subject to the warranties, representations, and agreements set forth herein, subject, however, to the terms and conditions of any separate written offering to include but not be limited to, HFA Guidelines and the MRBP Lending Guide.

All future purchases of Mortgage Loans by U.S. Bank shall be governed by the terms contained herein. The terms and conditions of any separate agreement signed by the parties hereto and pursuant to which U.S. Bank shall agree to buy and Lender shall agree to sell any Mortgage Loan shall survive and be deemed to be a part of this Agreement.

Agreement

1. Definitions: Definitions not found in this Agreement will be found in the MRBP Lending Guide or the Agency Guidelines.

- (a) “Agency Guidelines” means the guidelines published by Fannie Mae, Freddie Mac, Ginnie Mae, FHA, VA, and/or RHS.
- (b) “Applicable Law” means all applicable Federal and State statutes, rules and regulations, safety and soundness regulatory standards governing national banks, usury limitations, regulations governing lending, federal, state and local predatory lending and unfair and deceptive practices laws, including but not limited to the Federal Truth-In-Lending Act, the Equal Credit Opportunity Act, the Fair Housing Act, the Real Estate Settlement Procedures Act, Home Ownership Equity and Protection Act, Bank Secrecy Act, Anti Money Laundering regulations, the Flood Disaster Protection Act, the Depository Institutions Deregulation and Monetary Control Act, and the Garn-St. Germain Depository Institutions Act.
- (c) “Approved Appraisers” means real estate appraisers who conduct appraisals in accordance with the requirements described in the MRBP Lending Guide and/or HFA Lender Manual, and Title IX of the Financial Institutions Reform, Recovery, and Enforcement Act and its implementing regulations and who satisfy the U.S. Bank’s standards for appraiser independence as set forth in the MRBP Lending Guide.
- (d) “Bond Program” means the lending program established by the applicable HFA.
- (e) “Bond Program Information” means any policies and procedures contained in Bond Program announcements, bulletins, memoranda, or other similar communication.
- (f) “Closing Date” means that date the Mortgage was originated.
- (g) “Conventional Mortgage Loans” means loans eligible for sale to Fannie Mae and Freddie Mac.

- (h) “Down Payment Assistance” means a loan made to a Mortgagor for down payment assistance in connection with the making of a Mortgage Loan, the payment of which is deferred until the related Mortgage Loan is satisfied.
- (i) “Fannie Mae” means the Federal National Mortgage Association.
- (j) “FHA” means the Federal Housing Administration of the U.S. Department of Housing and Urban Development, or other successor to its functions.
- (k) “Freddie Mac” means the Federal Home Loan Mortgage Corporation.
- (l) “GAAP” means the Generally Accepted Accounting Principles accounting standards, conventions, and rules that accountants follow in recording summarizing and preparing financial statements.
- (m) “Ginnie Mae” means the Government National Mortgage Association.
- (n) “HFA” means Housing Finance Agency.
- (o) “HFA Guidelines” means the mortgage program established by or on behalf of an applicable HFA.
- (p) “HFA Lender Manual” means the lending manual established and maintained by an applicable HFA.
- (q) “HUD” means the U.S. Department of Housing and Urban Development.
- (r) “MARI” means Mortgage Asset Research Institute, Inc.
- (s) “MIDEX” means Mortgage Industry Data Exchange.
- (t) “Mortgage” means a residential first lien mortgage or deed of trust encumbering real property that has a one to four family residential dwelling permanently affixed to it.
- (u) “Mortgage Loan” means a qualified first lien mortgage loan originated by a Lender on residential real estate, evidenced by a Mortgage Note and secured by a Mortgage and excludes Down Payment Assistance.
- (v) “Mortgage Note” means the promissory note evidencing the obligation to repay a Mortgage Loan.
- (w) “Mortgaged Property” means real property encumbered by a Mortgage.
- (x) “Mortgagor” means the person or persons for whose benefit, Lender has disbursed the entire proceeds of the Mortgage Note and who is/are the true and actual person(s) who submitted an application to Lender and who have been approved by Lender and/or U.S. Bank to receive the Mortgage Loan represented by the Mortgage Note and Mortgage.
- (y) “MRBP Lending Guide” means the lending guide established and maintained by U.S. Bank at the website www.mrbp.usbank.com as may be amended from time to time
- (z) “RHS” means the Rural Housing Service of the United States Department of Agriculture, its successors and assigns.
- (aa) “U.S. Bank Lending Application” means the information provided by Lender to determine the Lender’s eligibility to participate in a particular HFA program.

(bb) “VA” means the Veterans Administration, an agency of the United States of America, or any successor to its functions.

2. HFA Programs: U.S. Bank and Lender acknowledge that Lender may be approved to participate in one or more HFA lending programs for which U.S. Bank is the servicer. Should Lender participate in one or more HFA lending programs, Lender agrees that the terms and conditions of this Agreement shall be binding for all the lending programs. Lender further agrees that the HFA Guidelines will be unique to each HFA lending program and Lender will be bound to those unique guidelines and Lender must meet the individual HFA’s requirements prior to being eligible for review by U.S. Bank for participation. U.S. Bank will provide Lender a written authorization notifying Lender that it may participate in an individual HFA lending program.

3. Mortgage Loans Eligible for Purchase (“Eligible Mortgage Loans”): Lender may offer for sale to U.S. Bank eligible VA, FHA, RHS, or Conventional Mortgage Loans. All such Mortgage Loans shall be sold with servicing released to U.S. Bank. All such Mortgage Loans shall be originated and closed according to the MRBP Lending Guide and Agency Guidelines as established, and amended from time to time. The MRBP Lending Guide and the Agency Guidelines are incorporated in and made a part of this Agreement. Lender shall be responsible for ensuring the compliance of each Mortgage Loan sold hereunder with the applicable Agency Guidelines and MRBP Lending Guide, which may exist at the time of purchase. Any loans specifically identified as being non-conforming, shall be originated and closed in accordance with the specifications as outlined in the HFA Guidelines, HFA Lender Manual, and the MRBP Lending Guide.

4. Payment for Mortgage Loans: The purchase price and any servicing release premium paid for each Mortgage Loan shall be established by HFA Guidelines. Payment for Mortgage Loans will be made following receipt and review of closing documentation, including evidence of compliance with HFA Guidelines, applicable mortgage loan underwriting requirements, FHA, VA and/or RHS requirements, rules and regulations, as well as Applicable Law. Payment for Mortgage Loans will be made via the Federal Reserve Bank Wire Transfer System (as defined in the MRBP Lending Guide) to the party directed by Lender. Any amounts to be collected by Lender for maintenance or improvements to the property, for the escrow of taxes or insurance not yet due, or for other reserves shall be deducted from the wire amount.

5. Document Delivery: Lender agrees to do all acts necessary to perfect title to each Mortgage and shall sell, assign and deliver to U.S. Bank, with respect to the purchase of each Mortgage Loan the documents set forth in the MRBP Lending Guide, all subject to the approval of U.S. Bank and its legal counsel as to proper form and execution. No later than 90 days from the date of purchase Lender shall deliver to U.S. Bank the required final documentation. Should Lender fail to satisfy, within 120 days from the date of purchase, the requirements for document delivery with respect to each Mortgage Loan purchased, U.S. Bank reserves the right to assess a penalty fee in the amount listed in MRBP Lending Guide for each calendar month or portion thereof if required documentation is not received. U.S. Bank’s assessment of this penalty fee shall be in addition to and not in lieu of U.S. Bank’s other remedies hereunder including the remedy of repurchase as provided in Section 10 below.

6. Lender Representations, Warranties, and Covenants: Lender hereby represents, warrants, and covenants as follows:

(a) Lender is and will continue to be duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it was incorporated or organized, as applicable, and has and will continue to maintain all licenses, registrations, and certifications necessary to carry on its business as now being conducted, and is and will continue to be licensed, registered, qualified, and in good standing in each state where property securing a Mortgage Loan is located if the laws of such state require licensing, registration or qualification in order to conduct business of the type conducted by Lender; and

(b) Lender has and will maintain the full corporate or partnership power and authority to execute and deliver the documents contemplated by this Agreement and to perform in accordance with each of the terms

thereof and the terms of the MRBP Lending Guide. The execution, delivery and performance of this Agreement by Lender and the consummation of the transactions contemplated hereby have been duly and validly authorized. This Agreement is a legal, valid, binding and enforceable obligation of Lender, and all requisite corporate or partnership action has been taken by Lender to make this Agreement valid and binding upon Lender and enforceable in accordance with its terms; and

(c) Lender has the ability to perform each and every obligation and/or requirement imposed on Lender pursuant to this Agreement, and no offset, counterclaim, or defense exists to the full performance by Lender of the requirements of this Agreement; and

(d) Neither the U.S. Bank Lending Application, this Agreement, nor any statement, report or other document furnished or to be furnished by Lender pursuant to this Agreement contains any untrue statement of material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading; and

(e) Lender has complied with, and has not violated any law, ordinance, requirement, regulation, rule or other order applicable to its business or properties, the violation of which might adversely affect the operations or financial condition of Lender to consummate the transactions contemplated by this Agreement; and

(f) All financial statements required to be submitted by Lender to U.S. Bank have been prepared in accordance with GAAP applied on a consistent basis by an independent certified accountant or other individual acceptable to U.S. Bank; and

(g) Lender has established procedures with respect to Approved Appraisers and Lender shall, upon U.S. Bank's request, provide U.S. Bank with any information Lender has in its possession regarding any appraiser or appraisal; and

(h) Lender shall at all times comply with Applicable Law and, in particular, but without limitation, shall not, at any time, (i) discourage or dissuade any person from applying for a Mortgage Loan (ii) offer or negotiate different interest rates or terms, or (iii) treat any applicant or potential applicant differently, on the basis of that person's race, sex, religion, national origin, age, color, disability, or marital status; or the fact that the person derives all or part of his/her income from any public assistance program; or the fact that the person has in good faith exercised any right under the Federal Consumer Credit Protection Act or any state anti-discrimination law; or based upon any other characteristic of the person which is defined to be a prohibited basis for credit discrimination under any Applicable Law.

7. Lender's Representations, Warranties, and Covenants regarding Mortgage Loans: With respect to every Mortgage Loan offered by Lender to U.S. Bank hereunder, Lender represents, warrants, and covenants as follows:

(a) U.S. Bank shall be entitled to rely upon Lender as assembler and preparer of all Mortgage Loan documents, and is under no duty whatsoever to investigate or confirm any of the information set forth therein as to its honesty, accuracy, or completeness.

(b) The Mortgage has been executed on the Closing Date by any and all person(s) necessary to create and convey a valid and legally enforceable first lien obligation in favor of Lender with respect to the Mortgage Note that is superior to all other liens or other claims, and the Mortgage Note is payable to Lender as payee and has been duly executed by the Mortgagor; and

(c) The sale of each Mortgage Loan is in Lender's ordinary course of business and will not result in (i) the breach of any term or provision of Lender's charter or bylaws, (ii) the breach of any term or provision of, or

conflict with or constitute a default of or result in the acceleration of any obligation under any agreement, indenture, loan or credit agreement, or other instrument to which Lender or any of its property is subject, or (iii) the violation of any law, rule, regulation, order, judgment, or decree to which Lender or any of its property is subject; and

(d) The entire proceeds of a Mortgage Loan was used by the Mortgagor to finance or refinance the purchase or initial construction of the Mortgaged Property, and the Mortgaged Property is or will be used by the Mortgagor as his/her/their principal residence or for such other purpose as is permitted by investor guidelines, HFA Guidelines or under the MRBP Lending Guide; and

(e) The Mortgage contains enforceable provisions that give the Mortgage holder rights and remedies to realize against the Mortgaged Property as expeditiously as Applicable Law allows, including, without limitation, the power of sale; and

(f) Lender has good and merchantable title to the Mortgage Loan as of the Closing Date and the assignment of each Mortgage Loan from Lender to U.S. Bank is valid, sufficient, enforceable and conveys good title to such Mortgage Loan to U.S. Bank, free and clear of any liens, claims, or encumbrances upon such Mortgage Loan; and Lender has not effected any assignment, sale or hypothecation of the Mortgage Loan, except in favor of U.S. Bank; and

(g) Lender will execute and deliver to U.S. Bank all instruments necessary to convey to U.S. Bank all rights, titles and interests in and to each Mortgage Loan and all documents evidencing insuring, guaranteeing or securing each Mortgage Loan; and

(h) All taxes and governmental assessments that became due and owing prior to the Closing Date in respect to each Mortgaged Property have been paid; and

(i) An escrow of funds in an amount sufficient, in accordance with industry standards or any applicable HUD regulations, to cover a portion of one calendar year's payments of taxes and governmental assessments, hazard insurance and, if applicable, mortgage insurance premiums or guaranty fees on each Mortgaged Property, has been established; and

(j) The unpaid principal balance of each Mortgage Loan is as stated; no part of each Mortgaged Property has been released from the lien securing each Mortgage Loan; the terms of each Mortgage Loan have in no way been changed or modified; and each Mortgage Loan is current and not in default and no condition or circumstance exists that, with the passage of time, would constitute a default; and

(k) Lender is the sole owner of each Mortgage Loan to be sold under this Agreement and has the requisite power and authority to sell, transfer, and assign such Mortgage Loan on the terms herein set forth, free and clear of all liens, claims and encumbrances upon such Mortgage Loan; and

(l) Each Mortgage Loan is of acceptable quality and is eligible for sale to the Fannie Mae, Ginnie Mae, Freddie Mac, FHA, VA, RHS, or non-conforming Investor whose Mortgage Loan eligibility specifications are outlined in the HFA Guidelines, Agency Guidelines or the MRBP Lending Guide and whose decision regarding acceptable quality and eligibility is determinative; and

(m) No predatory or deceptive lending practices, including but not limited to the extension of credit without regard for a Mortgagor's ability to repay the Mortgage Loan, and/or the extension of credit which has no apparent benefit to the Mortgagor were employed in connection with the Mortgage Loan application. Each Mortgage Loan application is in compliance with the anti-predatory lending eligibility requirements of the MRBP Lending Guide, Agency Guidelines and Applicable Law; and

(n) Each Mortgage Loan was properly closed in accordance with the requirements of the MRBP Lending Guide, HFA Guidelines, and all Agency Guidelines and Applicable Law as determined by U.S. Bank and/or the HFA. Each Mortgage Loan complies, as determined by U.S. Bank and/or the applicable agency, with Applicable Law; the MRBP Lending Guide, HFA Guidelines, and all Agency Guidelines; and

(o) The Mortgagor has duly executed and delivered appropriate evidence indicating that the Mortgagor has received any and all disclosure materials as required by Applicable Law; and

(p) The full original principal amount of each Mortgage Loan has been advanced to the Mortgagor, either by direct payment, or by payment made on the Mortgagor's request or approval; and all costs, fees, and expenses incurred in making, closing and recording such Mortgage Loan, have been paid; and

(q) There is in force a paid-up mortgagee policy of title insurance on each Mortgage Loan in an amount not less than the outstanding principal balance of the Mortgage Loan, affirming that the Mortgagor has fee simple, indefeasible title to the Mortgaged Property and insuring the validity and priority of Lender's first lien securing the Mortgage Loan, and such mortgagee policy of title insurance does not contain any exceptions to or defects in title not otherwise disclosed to and approved in advance by U.S. Bank in writing; and

(r) There is a valid paid-up hazard insurance policy in force, at the time of the purchase of each Mortgage Loan by U.S. Bank issued or written by an insurance company with a Best's Key Rating Guide financial size category of Class III or better, in an amount equal to at least the full replacement value of the improvements on the property secured by the Mortgage. The policy shall be of a type at least as protective as fire and extended coverage and shall contain a mortgagee clause and loss payable clause to the U.S. Bank in the form of the standard mortgage clause which clause shall protect the mortgagee's interest in the insured property separate and apart from the Mortgagor's interest in order that the mortgagee shall not be subject to any act, neglect, omission or misrepresentation of the insured which might void or breach coverage under the policy. Also, the policy shall contain suitable provisions for payment on all present and future mortgages on such premises in order of precedence. For properties in a designated special hazard area, which would include but not be limited to: wind, flood or sinkhole perils, there is in force a paid-up insurance policy or rider that provides coverage for such hazards. For properties located in a condominium or planned unit development project, Lender will provide a certificate of insurance naming U.S. Bank as the insured plus a certified true copy of the Master Hazard and Liability Policy; and

(s) All documents submitted or delivered are authentic, and all other representations as to each Mortgage Loan sold are true and correct and meet the requirements and specifications of all parts of this Agreement and the MRBP Lending Guide; and

(t) Each Mortgage, Mortgage Note, and all other Mortgage Loan documents executed by the Mortgagor create legal, valid and binding obligations of the Mortgagor, enforceable in accordance with their terms, there exists as of the Closing Date no right of offset, defense, right of rescission, homestead right, or counterclaim with respect to the Mortgage Note or any of the other documents, and there is no pending or threatened litigation that might affect the validity or enforceability of the Mortgage Note or the Mortgage; and

(u) Each Mortgaged Property is either free of damage and in good repair or the proceeds of the Mortgage Loan will be used to purchase and rehabilitate the Mortgaged Property, there is no proceeding pending or threatened for a partial or total condemnation or partition of the Mortgaged Property, and either there are no mechanic's or similar liens or claims that have been filed for work, labor or material (and no rights are outstanding that under applicable law could give rise to such a lien or claim) affecting the Mortgaged Property or such liens and claims have been insured against under the final Mortgagee Policy of Title Insurance; and

(v) As of the Closing Date, to the best of Lender's knowledge, after reasonable inspection, each Mortgaged Property was not affected by any condition arising from the presence of any dangerous, toxic or hazardous pollutants, chemicals, wastes, or substances; and

(w) All improvements on each Mortgaged Property, including new construction, have been or will be completed in full compliance with any applicable laws, regulations, or building codes and standards, and that the improvements comply with the laws, regulations, or building codes and standards in effect; and

(x) With respect to each appraisal delivered to U.S. Bank in connection with a prospective Mortgage Loan, the appraisal has been prepared by an Approved Appraiser, Lender has reviewed the appraisal and found the appraisal acceptable in accordance with the standards set forth in the MRBP Lending Guide; and

(y) No Mortgage Loan is (i) subject to, covered by or in violation of the Home Ownership and Equity Protection Act ("HOEPA") or (ii) classified as "high cost", "covered", "high risk home", "threshold", or "predatory" loan under any other applicable state, federal or local law, including any predatory or abusive lending laws (or similarly classified loans using different terminology under a law imposing heightened scrutiny or additional legal liability for residential mortgage loans having high interest rates, points and/or fees) or (iii) in violation of any state law or ordinance comparable to HOEPA.

8. U.S. Bank's Representations, Warranties, and Covenants: U.S. Bank represents, warrants and covenants as follows:

(a) U.S. Bank is and will continue to be a national bank and in good standing under the laws of the United States; and

(b) The execution, delivery and performance of this Agreement by U.S. Bank and the consummation of the transactions contemplated hereby have been duly and validly authorized. This Agreement is a legal, valid, binding and enforceable obligation of U.S. Bank, and all requisite corporate action has been taken by U.S. Bank to make this Agreement valid and binding upon U.S. Bank and enforceable in accordance with its terms; and

(c) U.S. Bank has the ability to perform each and every obligation and/or requirement imposed on U.S. Bank pursuant to this Agreement, and no offset, counterclaim, or defense exists to the full performance by U.S. Bank of the requirements of this Agreement.

9. Bond Program Information: In addition to all of the obligations, agreements, representations and warranties specifically set forth herein, Lender hereby agrees to perform all obligations and agreements, make all representations and warranties, and comply with all the provisions of the Bond Program Information. This Bond Program Information may be modified or amended from time to time. Modifications and additions to the Bond Program Information shall become effective upon the date received by Lender. All provisions of the Bond Program Information are hereby incorporated into this Agreement by reference.

10. Repurchase of Mortgage Loans & Reimbursement: Lender shall repurchase any Mortgage Loan sold to U.S. Bank or reimburse U.S. Bank for any and all claims, demands, actions, damages, suits and liabilities arising out of or related to a Mortgage Loan at any time upon the occurrence of any of the following events:

(a) Any false statement, misstatement, or act of omission of material fact contained in the Mortgage Loan documentation resulting from Lender's negligence or failure to exercise due diligence; or

(b) Lender fails to obtain FHA insurance, VA or RHS guaranty, private mortgage insurance, or if such insurance or guaranty lapses or for any reason becomes unavailable, as a result of any negligent act or

omission by Lender, or the failure by Lender to obtain such insurance or guaranty within ninety days from the date of purchase; or

- (c) U.S. Bank is required to repurchase any Mortgage Loan it sold to any investor, including, but not limited to, Fannie Mae and Freddie Mac, and the Mortgage Loan has been determined to be ineligible for purchase or not of acceptable quality either by investor demand, quality control review or indemnification demand or was ineligible for purchase as a result of a violation of any Agency Guideline for the said loan product or private mortgage insurance guidelines and/or provisions of the MRBP Lending Guide; or
- (d) Any representation or warranty made by Lender under this Agreement or the MRBP Lending Guide with respect to any Mortgage Loan shall, in the reasonable opinion of U.S. Bank, be, in whole or in part and with or without knowledge of Lender, false at the time when made by Lender or become false upon the occurrence of subsequent events; or
- (e) Any material fraud, misrepresentation or act of omission with respect to the information submitted on a particular Mortgage Loan is determined to exist by U.S. Bank or another investor. This includes, but is not limited to, Mortgagor or other third party fraud or misrepresentation, and any misrepresentation of Mortgagor's income, funds on deposit, or employment, or of the occupancy status of the Mortgaged Property; or
- (f) Lender's breach of any covenant or obligation to U.S. Bank under this Agreement or the MRBP Lending Guide with respect to a Mortgage Loan, specifically including, without limitation, Lender's obligations under Sections 3, 4, or 5.

The repurchase price for any Mortgage Loan that Lender is required to repurchase from U.S. Bank shall be an amount equal to its then unpaid principal balance of the Mortgage Loan on the date of repurchase, plus accrued interest, any servicing release premium paid, any Down Payment Assistance, if applicable, and direct expenses (including attorney's fees) incurred by U.S. Bank for any actions taken by it concerning, as a result of, or in connection with, any of the events or circumstances set forth herein as cause for repurchase. U.S. Bank's exercise of its right to have Lender repurchase any Mortgage Loan hereunder shall be in addition to, and not in lieu of, any other rights or remedies which U.S. Bank may have against Lender hereunder or under Applicable Law.

This Section shall survive termination of this Agreement.

11. Term and Termination:

- (a) **Term.** This Agreement will commence on the Effective Date and will continue in full force and effect for one 12 month term, unless terminated earlier by either Party pursuant to the termination rights set forth in this Agreement. Thereafter, this Agreement will automatically renew and continue for successive one year terms until terminated by either Party pursuant to the termination rights set forth in this Agreement.
- (b) **Events of Default.** Each of the following shall constitute an Event of Default on the part of Lender under this Agreement: (i) any breach by Lender of any of Lender's representations, warranties, or covenants set forth in this Agreement or the MRBP Lending Guide; (ii) the failure of Lender to perform any of its obligations under this Agreement or the MRBP Lending Guide; (iii) the occurrence of any act of insolvency or bankruptcy concerning Lender; (iv) Lender's failure to meet any capital, leverage, or other financial standard imposed by any applicable regulatory authority, warehouse lender, or in U.S. Bank's sole opinion, any material adverse change occurs in the financial condition of Lender; and (v) any federal or state regulatory authority or licensing agency shall cancel, rescind, or fail to renew Lender's license or institute any action against Lender for fraud or criminal conduct.

- (c) **Termination.** This Agreement may be terminated with respect to future purchases of Mortgage Loans by either party at any time by giving 30 day written notice of its decision to terminate this Agreement to the other party that complies with Section 15 of this Agreement. Upon the occurrence of any Event of Default as described in Section 11(b) of this Agreement(i), (ii), (iv) or (v), U.S. Bank may (1) terminate this Agreement by giving 30 day written notice to Lender if Lender fails to remedy or cure the breach, if such breach is curable, to U.S. Bank's satisfaction within 15 calendar days following written notice from U.S. Bank stating, with particularity and in reasonable detail, the nature of the claimed breach, or (2) without affecting any other rights or remedies available to U.S. Bank under this Agreement or at law or in equity, immediately suspend all registrations and lock-ins and may refuse to fund any or all Mortgage Loans, pending the cure, to U.S. Bank's satisfaction, of such Event of Default. Upon the occurrence of an Event of Default under Paragraph 11(b)(iii), this Agreement shall terminate automatically. Termination of this Agreement shall not in any respect change, alter, or modify the obligations of U.S. Bank and Lender with respect to Mortgage Loans that have been purchased by U.S. Bank from Lender prior to the date of such termination.

12. Indemnification: Lender shall protect, indemnify, and hold U.S. Bank harmless from and in respect to, any and all losses, liabilities, reasonable costs, and expenses, including attorneys' fees, that may be incurred by U.S. Bank with respect to, or proximately resulting from (a) any breach of any representation, warranty, or covenant of Lender hereunder; (b) Lender's refusal to repurchase any Mortgage Loan that has been determined to be ineligible for purchase or not of acceptable quality either by investor demand, quality control review or indemnification demand; (c) any inaccuracy or incompleteness in the Mortgage Loan documents or any act or omission by Lender, its agents and employees, including but not limited to failure to comply with applicable state, federal and local statutes or regulations; and (d) to the extent Lender, its agents or employees, commits an actual wrong, or makes some error or omission in the preparation of any Mortgage Loan or its documents.

13. MARI and MIDEX Release: Lender understands that U.S. Bank performs quality control reviews of the Mortgage Loans that Lender submits to U.S. Bank for purchase. Lender hereby consents to the release of information about any loan application that is believed to contain misrepresentations and/or irregularities. Lender agrees and gives its consent that it and its employees may be named as the originating entity or loan officers on such loans, whether or not Lender or its employees are implicated in the misrepresentations and/or irregularities. Lender hereby releases and agrees to hold harmless U.S. Bank, MARI, all MIDEX subscribers, and any trade associations that endorse the MIDEX system from any and all liability for damages, losses, costs, and expenses that may arise from the reporting or use of any information submitted by U.S. Bank or any other MIDEX subscriber to MARI, recorded in the MIDEX system, and used in any way by U.S. Bank or any other MIDEX subscriber.

14. Refund of Service Release Premiums:

- (a) If any Mortgage Loan is prepaid within 3 months following the date of purchase by U.S. Bank, Lender shall refund to U.S. Bank all service release premiums received from U.S. Bank with respect to that Mortgage Loan.
- (b) If any Mortgage Loan, underwritten by Lender, becomes delinquent during the first 3 scheduled monthly payments that are payable to the U.S. Bank, and the Mortgage Loan is not brought current by the borrower within 90 days of such delinquency, Lender shall refund to U.S. Bank all service release premiums received by Lender from U.S. Bank with respect to that Mortgage Loan, additionally, a processing fee of \$1,000 on Conventional Mortgage Loans and \$3,000 on FHA, VA and RHS Mortgage Loans shall be due from Lender and payable to U.S. Bank.

15. Notices: All notices, certificates or other communications hereunder shall be deemed given when personally delivered, delivered by overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to the addresses below. Lender or U.S. Bank may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

As to the Lender:

As to U.S. Bank:
U.S. Bank National Association
17500 Rockside Road
Bedford, OH 44146
Attn: Managing Director

16. Right to Audit: U.S. Bank's business operations are regularly audited by (1) various government agencies having supervisory and regulatory authority over U.S. Bank (the "Regulatory Authorities") and (2) U.S. Bank's own internal auditors. Lender must fully cooperate with U.S. Bank's efforts to meet its regulatory obligations and must comply in a timely manner with U.S. Bank's requests for documentation and information. Lender must make its books, records, and operations relating to all products and services provided to U.S. Bank available for audit or inspection by the Regulatory Authorities, by U.S. Bank, or by U.S. Bank's independent auditors with at least 48 hours' advance notice from U.S. Bank. Lender must provide to U.S. Bank Lender's audit reports including performance, financial, internal control and security reviews; SAS 70 type II, SSAE 16 or equivalent; penetration testing, intrusion detection; and firewall configuration. Lender must provide annual audited financial statements (including balance sheet, statements of income and expenses, cash flow statements, Report of Compliance with Specific Requirements Applicable to HUD Program Transactions, Report on the Internal Control Structure and Computation of Compliance with FHA Net Worth Requirements) to U.S. Bank within 90 days after the close of its fiscal year prepared by independent certified public accountants in accordance with GAAP. If a deficiency is noted or determined in any such audit report, Lender must also provide to U.S. Bank any and all documentation related to resolution of the audit deficiencies and the corrective actions implemented to prevent recurrence of such deficiency. Lender must also submit copies of current mortgage licenses Lender holds (where applicable). If U.S. Bank is the sponsor of Lender under the FHA Loan Correspondent Program, Lender will allow U.S. Bank access to its office facilities and loan records during normal business hours for an on-site compliance audit in accordance with HUD quality control requirements.

17. Insurance:

- (a) Required Insurance. Without limiting Lender's liability to U.S. Bank, Lender, at its sole cost and expense, will maintain adequate insurance coverage to protect U.S. Bank from any losses or claims which may arise out of the performance of obligations throughout the term of this Agreement, including renewal periods and transition periods. Such coverage will include:
- (1) Workers' compensation (statutory limits) and employer's liability (\$1,000,000 limits) insurance to the extent required by the laws of the state(s) in which the services are performed; and
 - (2) Commercial general liability and property damage insurance with combined bodily injury and property damage limits of at least \$2,000,000 combined single limit for bodily injury, death, property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and products and completed operations coverage, naming U.S. Bank as an additional insured; and
 - (3) Mortgage bank bond or mortgage originator policy of at least \$1,000,000; and
 - (4) Fidelity bonding of at least \$1,000,000 for claims based upon and damages arising out of or relating to Lender's employees' fraudulent or dishonest acts, and Bank shall be named loss payee in any proof of loss filed in connection with the services provided; and
 - (5) Errors and Omissions Insurance or comparable coverage of at least \$1,000,000 for claims based and damages arising out of or relating to Lender's employees' negligence, omissions, errors, or similar malfeasance of the Lender personnel.

All the insurance policies required to be obtained pursuant to this Agreement will be with companies licensed to do business in the state where the services will be performed and rated no less than Standard and Poor's AAAa to Claims Paying Ability or BBq to Qualified Solvency Rating as to financial rating and no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated). The foregoing requirements as to the types and limits of insurance coverage to be maintained by Lender and any approval or waiver of said insurance by U.S. Bank is not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lender pursuant to this Agreement, including the provisions concerning the indemnification obligations of Lender. Such insurance will be primary and noncontributory to an insurance or self-insurance maintained by U.S. Bank.

(b) **Certificates of Insurance.** Lender shall deliver certificates of insurance and additional insured endorsements for the applicable policies, to U.S. Bank at execution of this Agreement and no less than annually or upon U.S. Bank's request thereafter. The certificates of insurance shall evidence the coverage types, amounts described above, and set forth the amount of all deductibles, and will be endorsed:

- (1) In the name of U.S. Bank, its officers, agents, and employees as additional insured (required for General Liability policy only);
- (2) To provide that each of the policies is primary insurance with respect to any other insurance available to U.S. Bank as to any claim for which coverage is afforded under the policy; and
- (3) To provide that the policy shall apply separately to each insured against whom a claim is made or suit is brought (required for Commercial General Liability policy only).

(c) **Cancellation or Lapse of Insurance.** Lender shall give U.S. Bank 30 days' prior written notice of cancellation, non renewal, or material change in coverage, scope or amount of any insurance policy. Should Lender fail to keep in effect at all times the insurance coverage required under this Section, U.S. Bank may, in addition to and cumulative with any other remedies available at law, equity, or under this Agreement withhold payments to Lender required under this Agreement in an amount sufficient to procure the insurance required in this Section. If such right to withhold is insufficient, U.S. Bank may, at its sole option, procure sufficient insurance coverage or a similar instrument, and Lender agrees to reimburse U.S. Bank for any and all costs incurred by U.S. Bank as a result.

(d) **Claims made coverage.** To the extent that any insurance coverage required under this Section is purchased on a "claims-made" basis, such insurance shall cover all prior acts of Lender during the term of this Agreement, and such insurance shall be continuously maintained until at least 3 years beyond the expiration or termination of this Agreement, or Lender shall purchase "tail" coverage, effective upon termination of any such policy or such termination or expiration of this Agreement, to provide coverage for at least 3 years from the occurrence of either such event.

18. Relationship of the Parties: This Agreement nor any purchase of Mortgage Loans pursuant hereto shall constitute any agency relationship, legal representation, joint venture, partnership or employment between U.S. Bank and Lender. Neither party is in any way authorized to make any contract, agreement, warranty, or representation, or to create any obligation, express or implied, on behalf of the other.

19. Right to Offset: The Lender grants U.S. Bank the right of set off and U.S. Bank may deduct any and all fees, penalties, repurchase amounts, make-whole amounts, indemnification amounts, or other sums owed to U.S. Bank by the Lender under the terms of this Agreement or the terms of any other agreement between U.S. Bank and the Lender or the terms of the MRBP Lending Guide from the purchase price for Eligible Mortgage Loans being purchased by U.S. Bank from the Lender pursuant to this Agreement.

20. Entire Agreement: This Agreement, the HFA Guidelines, the Agency Guidelines, and the MRBP Lending Guide contain the entire agreement of the parties with respect to the subject matter hereof, and there are no representations, inducements, or other provisions other than those expressed in writing and included herein. No

changes, addendums, additions, or deletions to this Agreement will be acceptable except under the terms of Section 23 of this Agreement. This Agreement restates, and supersedes any and all prior mortgage purchase agreements or U.S. Bank lending agreements between the parties regarding a HFA program. All terms of this Agreement shall be construed and interpreted according to their plain meaning and no term shall be more strictly construed against U.S. Bank merely because U.S. Bank has drafted this Agreement.

21. Survival; Severability: All of the covenants, agreements, representations and warranties made herein by the parties hereto shall survive and continue in effect after the termination of the Agreement or the consummation of the transactions contemplated hereby. Any provisions of the Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidation of the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument.

22. Assignment: This Agreement may not be assigned or transferred by Lender without the prior written consent. U.S. Bank may assign this Agreement to any affiliate, subsidiary, parent, successor by merger or successor-in-interest without the prior consent of Lender. This Agreement, and any and all representations, warranties or covenants of Lender hereunder, may be enforced against Lender by U.S. Bank and/or their successors and assigns.

23. Amendment: U.S. Bank shall have the right to amend this Agreement with written notice to Lender.

24. Governing Law; Venue: It is mutually understood and agreed that the law of the State of Minnesota shall govern this Agreement in all respects. Any disputes arising out of or relating to this Agreement, including but not limited to any alleged breach of this Agreement, shall be venued exclusively in the state or federal courts in the State of Minnesota and the parties to this Agreement hereby expressly consent to the exercise of personal jurisdiction over them by such courts.

25. Confidentiality:

(a) Definition. Each party (a “Recipient”) may have access to and each party (as “Owner”) may provide to the other party, information that the Owner regards as confidential or proprietary. “Confidential Information” means information of a commercial, proprietary or technical nature and includes the following, whether now in existence or hereafter created:

- (1) any information of or about Mortgagors of any nature whatsoever, and specifically including, the fact that someone is a customer or prospective customer of U.S. Bank, all lists of customers, former customers, applicants and prospective customers and all personal or financial information relating to and identified with such persons (“Customer Information”);
- (2) all information marked “confidential” or similarly marked, or information that the Recipient should, in the exercise of reasonable business judgment, recognize as confidential;
- (3) all business, financial or technical information of the Owner;
- (4) the Owner’s marketing philosophy and objectives, promotions, markets, materials, financial results, technological developments and other similar proprietary information and materials;
- (5) all information protected by rights embodied in copyrights, whether registered or unregistered (including all derivative works), patents or pending patent applications, know how, trade secrets and any other intellectual property rights of the Owner or Owner’s licensors;

- (6) information with respect to employees of U.S. Bank which is non-public, confidential, business related, or proprietary in nature, including names of employees, the employees' positions within U.S. Bank, the fact that they are employees of U.S. Bank, contact information for employees, personal employee identification numbers, and any other information released to Lender regarding employees in the past and in the future; and
 - (7) all notes, memoranda, analyses, compilations, studies and other documents, whether prepared by the Owner, the Recipient or others, which contain or otherwise reflect Confidential Information.
- (b) Exclusions. Except for Customer Information, the term Confidential Information excludes any portion of such information that Recipient can establish by clear and convincing evidence to have:
- (1) been publicly known without breach of this Agreement;
 - (2) been known by Recipient without any obligation of confidentiality, prior to disclosure of such Confidential Information; or
 - (3) been received in good faith from a third party source that to Recipient's reasonable knowledge rightfully disclosed such information; or
 - (4) been developed independently by Recipient without reference to the Owner's Confidential Information.
- (c) Essential Obligation.
- (1) Confidential Information must be held in confidence and disclosed only to those employees or agents whose duties reasonably require access to such information. Recipient must protect the Owner's Confidential Information using at least the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure or duplication (except as required for backup systems) of such Confidential Information as Recipient uses to protect its own confidential information of a similar nature. Recipient shall establish and maintain data safeguards against the destruction, loss, alteration of or unauthorized access to Owner's Confidential Information in the possession of Recipient.
 - (2) Each party must establish and maintain data security policies and procedures designed to ensure the following:
 - a) security and confidentiality of Customer Information;
 - b) protection against anticipated threats or hazards to the security or integrity of Customer Information; and
 - c) protection against the unauthorized access or use of Customer Information.
 - (3) Lender must permit U.S. Bank to monitor and/or audit Lender's compliance with this Section during regular business hours upon not less than forty-eight hours' notice to Lender and provide U.S. Bank copies of audits and system test results acquired by Lender in relation to the data security policies and procedures designed to meet the requirements set forth above.
- (d) Compelled Disclosure. If Recipient is required by a court or governmental agency having proper jurisdiction to disclose any Confidential Information, Recipient must promptly provide the Owner notice of such requirement to enable the Owner to seek an appropriate protective order. Provided however, if required

by law, rule or regulation, U.S. Bank may disclose Lender's Confidential Information to a governmental agency with proper jurisdiction without notification to Lender.

(e) Limited Use of Confidential Information and Survival of Obligations. Recipient may use the Confidential Information only as necessary for Recipient's performance under or pursuant to rights granted in this Agreement and for no other purpose. Recipient's limited right to use the Confidential Information expires upon expiration or termination of this Agreement. Recipient's obligations of confidentiality and non-disclosure survive termination or expiration of this Agreement. Upon expiration of Recipient's limited right to use the Confidential Information, Recipient must return all physical embodiments to Owner or, with Owner's permission, Recipient may destroy the Confidential Information.

(f) Disposition of Confidential Information. Recipient must develop and maintain appropriate security measures for the proper disposal and destruction of Confidential Information. Upon Expiration of Recipient's limited right to use the Confidential Information, Recipient must return all physical embodiments thereof to Owner or, with Owner's permission, Recipient may destroy the Confidential Information. Recipient shall provide written certification to Owner that Recipient has returned, or destroyed, all such Confidential Information in Recipient's possession. Notwithstanding the foregoing, Recipient may retain one archival copy of Confidential Information, which may be used solely to demonstrate compliance with the provisions of this Section. If Lender's services include or require removal or destruction of media storage devices, Lender shall use best industry practices to clear U.S. Bank's Confidential Information from the media storage device and shall provide certification that all Confidential Information has been removed from the device or media storage device has been destroyed.

(g) Disclosure to Third Parties. If disclosure of Confidential Information to third parties is required or allowed under this Agreement, Recipient must ensure that such third parties have express obligations of confidentiality and non-disclosure substantially similar to Recipient's obligations under this Agreement. Recipient will be liable for any and all damages arising out of such third parties' disclosure of Confidential Information.

(h) Remedies. If Recipient or any of its representatives or agents breaches the covenants set forth in this Agreement, irreparable injury may result to the Owner or third parties entrusting Confidential Information to the Owner. Therefore, the Owner's remedies at law may be inadequate and the Owner shall be entitled to seek an injunction to restrain any continuing breach. Notwithstanding any limitation on Recipient's liability, the Owner shall further be entitled any other rights and remedies that it may have at law or in equity.

(i) Security Breach. If there is any actual or suspected theft of, accidental disclosure of, loss of, or inability to account for any Confidential Information by Lender and/or any unauthorized intrusions into Lender's facilities or secure systems (collectively "Security Breach"), Lender must immediately, i) notify U.S. Bank, ii) estimate the Security Breach's effect on U.S. Bank, iii) specify the corrective action to be taken, iv) investigate and determine if a Security Breach has occurred, and v) take corrective action to prevent further breach. Lender must, as soon as is reasonably practicable, make a report to U.S. Bank including details of the Security Breach and the corrective action Lender has taken to prevent further breach. Lender must cooperate fully with U.S. Bank to notify U.S. Bank's Customer(s) as to the facts and circumstances of the Security Breach. Except as may be strictly required by Applicable Law, Lender agrees that it will not inform any third party of any such Security Breach without U.S. Bank's prior written consent; however, if such disclosure is required by applicable law, Lender agrees to work with U.S. Bank regarding the content of such disclosure so as to minimize any potential adverse impact upon U.S. Bank and its clients and customers.

26. Attorney's Fees: If it is determined in a judicial proceeding that the Lender has failed to perform under any provision of this Agreement or if U.S. Bank shall employ attorneys or incur other expenses for the enforcement, performance, or observance of the terms of this Agreement on the part of Lender, then U.S. Bank shall be reimbursed by the Lender on demand for reasonable attorneys' fees and other out-of-pocket expenses.

27. Waiver of Jury Trial: Each party irrevocably waives to the extent permitted by law all rights to trial by jury in any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated under this Agreement. Each party represents to the other party that this waiver is knowing, willing and voluntarily given.

IN WITNESS WHEREOF, each party has executed this Agreement as of the date first written above.

Dated this ____ day of _____, 20__

Dated this ____ day of _____, 20__

By Lender:

By U.S. Bank:

(Company Name)

U.S. Bank National Association

(Signature of Authorized Signer)

(Signature of Authorized Signer)

(Printed Name of Authorized Signer)

(Printed Name of Authorized Signer)

(Title of Authorized Signer)

(Title of Authorized Signer)