

U.S. Bank Home Mortgage

PARTICIPATING LENDER AGREEMENT

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

From time to time pursuant to this Agreement, Participating Lender shall sell and U.S. Bank shall buy mortgage loans on residential real estate (hereinafter collectively called the “Mortgage Loans” and individually a “Mortgage Loan”). This Agreement shall govern the sale and transfer of such Mortgage Loans by Participating 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, the Mortgage Program Guidelines (HFA Guidelines) established by or on behalf of a Housing Finance Agency (HFA), for which U.S. Bank acts as master servicer and the U.S. Bank Lending Manual established and maintained by U.S. Bank at the web site www.mrbp.usbank.com.

All future purchases of Mortgage Loans by U.S. Bank shall be governed by the terms contained herein unless the parties shall agree in writing before or at the time such purchases are made. The purchase price and any servicing release premium paid for each Mortgage Loan shall be established by HFA Guidelines. The terms and conditions of any separate offering signed by the parties hereto and pursuant to which U.S. Bank shall agree to buy and Participating Lender shall agree to sell any Mortgage Loan shall survive and be deemed to be a part of this Agreement. This Agreement, and any and all representations, warranties, or covenants of Participating Lender hereunder, may be enforced against Participating Lender by U.S. Bank and/or their successors and assigns.

U.S. Bank and the Participating Lender acknowledge that the Participating Lender may be approved to participate in one or more HFA lending programs for which U.S. Bank is the master servicer. Should the Participating Lender participate in one or more HFA lending programs, the Participating Lender agrees that the terms and conditions of this agreement shall be binding for all the lending programs. The Participating Lender further agrees that the HFA Guidelines will be unique to each HFA lending program and the Participating Lender will be bound to those unique guidelines. U.S. Bank will provide the Participating Lender a written authorization notifying the Participating Lender that it may participate in an individual HFA lending program.

- 1. LOANS ELIGIBLE FOR PURCHASE:** Participating 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 standard agency regulations as established, and amended from time to time, by the HFA Guidelines, U.S. Bank Lending Manual, the Federal National Mortgage Association (“Fannie Mae”), the Federal Home Loan Mortgage Corporation (“Freddie Mac”), the Government National Mortgage Association (“Ginnie Mae”), the Federal Housing Administration (“FHA”), the Veterans Administration (“VA”), and/or the US Department of Agriculture Rural Housing Service (“RHS”), formerly Farmers Home Administration (“FmHA”). It is hereby understood and agreed, for purposes of this Agreement, that the aforementioned standard agency regulations are incorporated in and made a part hereof. All Mortgage Loans offered by Participating Lender must be secured by residential first and/or-lien mortgages or deeds of trust. Participating Lender shall be responsible for ensuring the compliance of Mortgage Loans sold hereunder with the applicable agency regulations 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 and HFA Participating Lender Manual.

2. **PAYMENT FOR LOANS:** Payment for 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 all Federal and State statutes, rules and regulations, including but not limited to the Federal Truth-In-Lending Act, the Equal Credit Opportunity Act, the Fair Housing Act and the Real Estate Settlement Procedures Act. Payment for Loans will be made via the Federal Reserve Wire Transfer System to the party directed by the Participating Lender. Any amounts collected by Participating 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.
3. **DELIVERY OF DOCUMENTS:** Participating Lender agrees to do all acts necessary to perfect title to the Mortgage Loans to U.S. Bank and shall sell, assign and deliver to U.S. Bank, with respect to the purchase of each such Mortgage Loan, the documents set forth in the U.S. Bank Lending Manual, all subject to the approval of U.S. Bank and its legal counsel as to proper form and execution. No later than ninety (90) days from the date of purchase Participating Lender shall deliver to U.S. Bank the required final documentation. Should Participating Lender fail to satisfy, within 120 days from the date of purchase, the requirements for document delivery with respect to any Mortgage Loan purchased, U.S. Bank reserves the right to assess a penalty fee 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 Paragraph 7 hereof.
4. **GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF PARTICIPATING LENDER:**

Participating Lender hereby represents, warrants, and covenants as follows:

- a) Participating 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 Participating Lender; and
- b) Participating 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 U.S. Bank Lending Manual. The execution, delivery and performance of this Agreement by Participating 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 Participating Lender, and all requisite corporate or partnership action has been taken by Participating Lender to make this Agreement valid and binding upon Participating Lender and enforceable in accordance with its terms; and
- c) Participating Lender has the ability to perform each and every obligation and/or requirement imposed on Participating Lender pursuant to this Agreement, and no offset, counterclaim, or defense exists to the full performance by Participating 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 Participating 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) Participating 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 Participating Lender to consummate the transactions contemplated by this Agreement; and
- f) All financial statements required to be submitted by Participating Lender to U.S. Bank have been prepared in accordance with Generally Accepted Accounting Practices applied on a consistent basis by an independent Certified Accountant or other individual acceptable to U.S. Bank; and
- g) Participating Lender has established procedures with respect to real estate appraisers and appraisals in accordance with the requirements described in the U.S. Bank Lending Manual and/or HFA Participating Lender Manual, and Title IX of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”) and implementing regulations, Participating Lender maintains a list of approved appraisers (the “Approved Appraisers”) who satisfy the U.S. Bank’s standards for appraiser independence as set forth in the U.S. Bank Lending Manual, and Participating Lender shall, upon U.S. Bank's request, provide U.S. Bank with any information Participating Lender has in its possession regarding any appraiser or appraisal; and
- h) Participating Lender shall at all times comply with all federal, state, and local laws, regulations, and/or ordinances applicable to it 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 state or federal law or regulation.

5. PARTICIPATING LENDER’S REPRESENTATIONS, WARRANTIES, AND COVENANTS REGARDING MORTGAGE LOANS

With respect to every Mortgage Loan offered by Participating Lender to U.S. Bank hereunder, Participating Lender represents, warrants, and covenants as follows:

- a) The security agreement, deed of trust or other document securing the Mortgage Loan (the “Mortgage”) has been executed, on the date stated in the Mortgage (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 the Participating Lender with respect to the Mortgage Note that is superior to all other liens or other claims, and the note evidencing the Mortgage Loan (the “Mortgage Note”) is payable to Participating Lender as payee and has been duly executed by the person or person(s) (the “Mortgagor”, whether one or more) to whom, or for whose benefit, Participating 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 Participating Lender and who have been approved by Participating Lender and/or U.S. Bank to receive the Mortgage Loan represented by the Mortgage Note and Mortgage; and
- b) The sale of the Mortgage Loan is in Participating Lender’s ordinary course of business and will not result in (i) the breach of any term or provision of Participating 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 Participating Lender or any of its property is subject, or (iii) the violation of any law, rule, regulation, order, judgment, or decree to which Participating Lender or any of its property is subject; and
- c) The entire proceeds of the Mortgage Loan was used by the Mortgagor to finance or refinance the purchase or initial construction of the one to four family residential dwelling permanently affixed to that real property described in the Mortgage (the "Mortgaged Property"), and the Mortgaged Property is or will be used by the Mortgagor as his/her/their principal or for such other purpose as is permitted by investor guidelines, HFA Guidelines or under the U.S. Bank Lending Manual; and
 - d) 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
 - e) Participating Lender has good and merchantable title to the Mortgage Loan as of the Closing Date and the assignment of the Mortgage Loan from Participating 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 Participating Lender has not effected any assignment, sale or hypothecation of the Mortgage Loan, except in favor of U.S. Bank; and
 - f) Participating 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 Loan; and
 - g) All taxes and governmental assessments that became due and owing prior to the Closing Date in respect to the Mortgaged Property have been paid; and
 - h) An escrow of funds in an amount sufficient, in accordance with industry standards or any applicable HUD regulations, to cover a portion of one (1) calendar year's payments of taxes and governmental assessments, hazard insurance and, if applicable, mortgage insurance premiums or guaranty fees on the Mortgaged Property, has been established; and
 - i) The unpaid principal balance of the Mortgage Loan is as stated; no part of the Mortgaged Property has been released from the lien securing each Mortgage Loan; the terms of the Mortgage Loan have in no way been changed or modified; and the 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
 - j) Participating 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
 - k) 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 or the U.S. Bank Lending Manual and whose decision regarding acceptable quality and eligibility is determinative; and
 - l) No predatory or deceptive lending practices, including but not limited to the extension of credit without regard for the 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 U.S. Bank Lending Manual and all applicable agency's or investor's rules and regulations; and
 - m) The Mortgage Loan was properly closed in accordance with the requirements of the U.S. Bank Lending Manual, and all applicable agencies rules and regulations as determined by U.S. Bank and/or the applicable agency. The Mortgage Loan complies, as determined by U.S. Bank and/or the applicable agency, with all applicable federal and state laws, rules, and regulations, as from time to time amended, including but not limited to the following: all applicable safety and soundness regulatory standards governing national banks, applicable usury limitations, the applicable laws and regulations governing

lending, federal, state and local predatory lending and unfair and deceptive practices laws, Home Ownership Equity and Protection Act, Bank Secrecy Act, Anti Money Laundering regulations, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, the Flood Disaster Protection Act, the Fair Housing Act, the Truth-in-Lending Act of 1968, the Depository Institutions Deregulation and Monetary Control Act of 1980, the Garn-St. Germain Depository Institutions Act of 1982 and all applicable regulations issued pursuant thereto; and that all conditions as to the validity, transferability and continuation of any FHA Insurance Contract, VA Loan Guaranty Certificate, or RHS Loan Note Guaranty if any, as required by the National Housing Act of 1934, the Servicemen's Readjustment Act of 1944, as amended, or the Cranston-Gonzales National Affordable Housing Act of 1990, and the rules and regulations thereunder, or by the FHA, VA or RHS have been properly satisfied, and said FHA Insurance Contract, FHA Commitment, VA Loan Guaranty Certificate or right to obtain a VA Loan Guaranty Certificate, or RHS Loan Note Guaranty, on each Mortgage Loan will be valid and enforceable by U.S. Bank; and

- n) 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 regulations; and
- o) 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 the Mortgage Loan, have been paid; and
- p) There is in force a paid-up Mortgagee Policy of Title Insurance on the Mortgage Loan in an amount not less than the outstanding principal balance of the Loan, affirming that the Mortgagor has fee simple, indefeasible title to the Mortgaged Property and insuring the validity and priority of Participating 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
- q) There is a valid paid-up hazard insurance policy in force, at the time of the purchase of the 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 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 PUD project, Participating 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
- r) All documents submitted or delivered are genuine, 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 U.S. Bank Lending Manual; and
- s) The 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
- t) The 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

- u) As of the Closing Date, to the best of Participating Lender 's knowledge, after reasonable inspection, the mortgaged property was not affected by any condition arising from the presence of any dangerous, toxic or hazardous pollutants, chemicals, wastes, or substances; and
- v) All improvements on the 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
- w) 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, Participating Lender has reviewed the appraisal and found the appraisal acceptable in accordance with the standards set forth in the U.S. Bank Lending Manual, and Participating Lender shall, upon U.S. Bank's request, provide U.S. Bank with any information Participating Lender has in its possession regarding the appraiser or appraisal; and
- x) In addition to those representations, warranties, and covenants specifically set forth above, Participating Lender makes all representations, warranties, and covenants expressed by Participating Lender to U.S. Bank orally or in writing with respect to any particular Mortgage Loan, and expressly makes any and all additional representations, warranties, or covenants that are normally or customarily made in connection with a mortgage loan of the same type and terms as the Mortgage Loan.
- y) None of the Mortgage Loans is (i) subject to, covered by or in violation of the Home Ownership and Equity Protection Act of 1994 ("HOEPA") or (ii) classified as "high cost", "covered", "high risk home", "threshold", or "predatory" loans 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.

6. BOND PROGRAM INFORMATION: In addition to all of the obligations, agreements, representations and warranties specifically set forth herein, Participating 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 including any policies and procedures contained in Bond Program announcements, bulletins, memoranda, or other similar communication which are collectively referred to as "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 Participating Lender. All provisions of the Bond Program Information are hereby incorporated into this Agreement by reference.

7. REPURCHASE OF LOANS: Participating Lender hereby agrees to repurchase any Mortgage Loan sold to U.S. Bank 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 Participating Lender 's negligence or failure to exercise due diligence as disclosed by actual inspection by U.S. Bank or its representative, or otherwise disclosed; or
- b) Participating 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 Participating Lender, or the failure by Participating Lender to obtain such insurance or guaranty within ninety (90) days from the date of purchase; or

- c) U.S. Bank is required to repurchase any Mortgage Loan sold by it to any investor 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 underwriting guideline for the said loan product or Private Mortgage Insurance Guidelines and/or provisions of the U.S. Bank Lending Manual ; or
- d) Any representation or warranty made by Participating Lender under this Agreement or the U.S. Bank Lending Manual 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 Participating Lender, false at the time when made by Participating 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) Participating Lender's breach of any covenant or obligation to U.S. Bank with respect to the Mortgage Loan under this Agreement or the U.S. Bank Lending Manual, specifically including, without limitation, Participating Lender's obligations under Section 3,4, or 5 hereof.

The repurchase price for any Mortgage Loan that Participating 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, 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 Participating 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 Participating Lender hereunder or under applicable law.

8. INDEMNIFICATION: Participating 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 any breach of any representation, warranty, or covenant of Participating Lender hereunder. Participating 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 Participating 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. U.S. Bank shall be entitled to rely upon Participating 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. Participating Lender hereby agrees to indemnify and hold U.S. Bank harmless from any claim, loss or other damage to U.S. Bank including reasonable attorneys fees resulting in whole or in part from any inaccuracy or incompleteness in the Mortgage Loan documents or any act or omission by Participating Lender, its agents and employees, including but not limited to failure to comply with applicable state, federal and local statutes or regulations. To the extent Participating 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 and as a result thereof, and based thereon, U.S. Bank commits an act or omission for which it becomes liable to the Mortgage(s) or any third party and/or a claim or cause of action is instituted against U.S. Bank, Participating Lender shall and hereby agrees to indemnify and hold U.S. Bank harmless from any such loss or damage, including reasonable attorneys fees, resulting therefrom.

9. MARI and MIDEX Release: Participating Lender understands that U.S. Bank performs quality control reviews of the Mortgage Loans that Participating Lender submits to U.S. Bank for purchase. Participating Lender hereby consents to the release of information about any loan application that is believed to contain misrepresentations and/or irregularities. Participating 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 Participating Lender or its employees are implicated in the misrepresentations and/or irregularities. Participating Lender hereby releases and agrees to hold harmless U.S. Bank, Mortgage Asset Research Institute, Inc. ("MARI"), all Mortgage Industry Data Exchange ("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.

10. REFUND OF SERVICE RELEASE PREMIUMS:

- a) If any Mortgage Loan is prepaid within three (3) months following the date of purchase by U.S. Bank, Participating 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 Participating Lender, becomes delinquent during the first three (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, Participating Lender shall refund to U.S. Bank all service release premiums received by Participating Lender from U.S. Bank with respect to that Mortgage Loan, additionally, a processing fee of \$1,000 on conventional loans and \$3,000 on government loans (FHA, VA and RHS) shall be due from Participating Lender and payable to U.S. Bank.

11. NOTICES: Any notice provided for herein shall be sufficient if sent by first class United States mail, postage prepaid, addressed as follows:

If to U.S. Bank: U.S. Bank Home Mortgage
17500 Rockside Road
Bedford, OH 44146
Attn: Managing Director

If to Participating Lender: _____

Attn: _____

Either party may change its address for purposes hereof by giving notice to the other party.

12. FINANCIAL STATEMENTS AND RIGHT TO AUDIT: Participating Lender agrees to 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 ninety (90) days after the close of its fiscal year prepared by independent certified public accountants in accordance with Generally Accepted Accounting Principles (GAAP). Participating Lender will also submit copies of current Mortgage Licenses (where applicable) and a copy of a current Fidelity Bond and E & O Insurance Policy. If U.S. Bank is the Sponsor of the Participating Lender under the FHA Loan Correspondent Program, Participating Lender agrees to allow U.S. Bank access to their

office facilities and loan records during normal business hours for an on-site compliance audit in accordance with HUD quality control requirements.

- 13. INSURANCE:** Participating Lender shall maintain in full force Errors and Omissions Insurance and a Fidelity Bond, Mortgage Banker Bond or Mortgage Originator Policy in such amounts as required by HUD or as U.S. Bank may reasonably require to indemnify it from any loss or damage incurred in connection with this Agreement. U.S. Bank must be named as a “loss payee” and must have the right to file a claim directly with the insurer if Participating Lender fails to file a claim for a covered loss that U.S. Bank incurs. The insurer must agree to notify U.S. Bank at least 30 days before it cancels, reduces or modifies the Participating Lender’s coverage for any reason or within 10 days after it receives a request from Participating Lender to cancel or reduce any coverage.
- 14. RELATIONSHIP OF THE PARTIES:** U.S. Bank and Participating Lender hereby agree that neither this Agreement nor any purchase of Mortgage Loans pursuant hereto shall constitute any agency relationship, legal representation, joint venture, partnership or employment. U.S. Bank and Participating Lender agree that 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.
- 15. EVENTS OF DEFAULT:** Each of the following shall constitute an Event of Default on the part of Participating Lender under this Agreement: (i) any breach by Participating Lender of any of Participating Lender’s representations, warranties, or covenants set forth in this Agreement or the U.S. Bank Lending Manual; (ii) the failure of Participating Lender to perform any of its obligations under this Agreement or the U.S. Bank Lending Manual; (iii) the occurrence of any act of insolvency or bankruptcy concerning Participating Lender; (iv) Participating 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 Participating Lender; (v) any federal or state regulatory authority or licensing agency shall cancel, rescind, or fail to renew Participating Lender’s license or institute any action against Participating Lender for fraud or criminal conduct.
- 16. RIGHT OF OFFSET:** U.S. Bank shall have the right to deduct any penalties, fees, taxes, or other charges or obligations of any kind owed by Participating Lender to U.S. Bank from the amount to be paid for any Mortgage Loan purchased by U.S. Bank hereunder.
- 17. ENTIRE AGREEMENT:** This Agreement, the HFA Guidelines and the U.S. Bank Lending Manual 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 Paragraph 20. This Agreement restates, and supersedes any and all prior Mortgage Purchase Agreements or U.S. Bank lending agreements between the parties.
- 18. SURVIVAL OF PROVISIONS; 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.

19. ASSIGNMENT: This Agreement may not be assigned or transferred by Participating Lender without the prior written consent of U.S. Bank.

20. AMENDMENT/TERMINATION: U.S. Bank shall have the right to amend this Agreement with written notice to the Participating Lender. At U.S. Bank's request, Participating Lender shall acknowledge changes to the Agreement in writing, but Participating Lender's failure to provide written acknowledgment of any amendment shall not impair the enforceability of such amendment. This Agreement may be terminated with respect to future purchases of Mortgage Loans by either party at any time by giving written notice of termination to the other party. Upon the occurrence of any Event of Default as described in Paragraph 15(i), 15(ii), 15(iv) or 15(v) hereof, U.S. Bank may either terminate this Agreement upon notice to Participating Lender or, 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 15(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 Participating Lender with respect to Mortgage Loans that have been purchased by U.S. Bank from Participating Lender prior to the date of such termination.

21. GOVERNING LAW; INTERPRETATION: It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Minnesota as to both interpretation and performance. 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. 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.

22. CONFIDENTIALITY:

- a) Confidential Information. Each party hereto (as "Recipient") may have access to and each party hereto (as "Owner") may provide to the other party, information that Owner regards as confidential or proprietary. "Confidential Information" includes, but is not limited to, the following information, whether now in existence or hereafter created: (a) any and all information of or about U.S. Bank's customers of any nature whatsoever, and specifically including without limitation, the fact that someone is a customer or prospective customer of U.S. Bank or Facility, 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"); (b) all business, financial, technical, and pricing information of Owner and any of Owner's vendors; (c) Owner's marketing philosophy and objectives, promotions, markets, materials, financial results, technological developments and other similar proprietary information and materials; (d) all information marked as "confidential" or similarly marked, or information that Recipient should, in the exercise of reasonable business judgment, recognize as confidential; and (e) all notes, memoranda, analyses, compilations, studies and other documents, whether prepared by Owner, Recipient or others, which contain or otherwise reflect Confidential Information. Without limitation the terms of this Agreement and shall be Confidential Information of U.S. Bank.
- b) Exceptions. Except for Customer Information, the term "Confidential Information" excludes any portion of such information that Recipient can establish to have been: (a) publicly known without breach of this Master Agreement; (b) known by Recipient without any obligation of confidentiality,

prior to disclosure of such Confidential Information; (c) received in good faith from a third-party source that to Recipient's reasonable knowledge rightfully disclosed such information; or (d) developed independently by Recipient without reference to Owner's Confidential Information. If Recipient is required by a court or governmental agency having proper jurisdiction to disclose any Confidential Information, Recipient must promptly provide to Owner notice of such request to enable Owner to seek an appropriate protective order.

- c) **Security and Use.** 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. Confidential Information must be held in confidence and disclosed only to those employees or agents whose duties reasonably require access to such information. Recipient may use the Confidential Information only as necessary for Recipient's performance hereunder. Recipient must protect 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's limited right to use the Confidential Information expires upon expiration or termination of this Agreement for any reason. Recipient's obligations of confidentiality and non-disclosure survive termination or expiration for any reason of this Agreement.
- d) **Return or Destruction.** Recipient is required to develop 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 (except for any backups thereof).
- e) **Disclosure.** If disclosure of Confidential Information to third parties is required or allowed under this Master Agreement, Recipient must ensure that such third parties have express obligations of confidentiality and non-disclosure substantially similar to Recipient's obligations hereunder. Liability for damages because of disclosure of Confidential Information by any such third parties must be borne by Recipient. If Recipient or any of its representatives or agents breaches the covenants set forth in this Master Agreement as to Confidential Information, irreparable injury may result to Owner or third parties entrusting Confidential Information to Owner. Therefore, Owner's remedies at law may be inadequate and Owner shall be entitled to seek an injunction to restrain any continuing breach. Notwithstanding any limitation on Recipient's liability, Owner shall further be entitled to any other rights and remedies that it may have at law or in equity.
- f) **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 Recipient and/or any unauthorized intrusions into Recipient's facilities or secure systems (collectively "Security Breach"), Recipient must immediately (a) notify Owner (b) estimate the Security Breach's effect on Owner (c) specify the corrective action to be taken, and (d) investigate and determine if an Security Breach has occurred. If, based upon Recipient's investigation, Recipient determines that there has been an actual Security Breach, Recipient must promptly notify Owner and must promptly investigate the scope of the Security Breach, and must promptly take corrective action to prevent further Security Breach. Recipient must, as soon as is reasonably practicable, make a report to Owner including details of the Security Breach (including Customer(s)' identities and the nature of the information disclosed) and the corrective action Recipient has taken to prevent further Security Breach. Recipient must, in the case of a Security Breach, cooperate fully with Owner to notify Owner's Customer(s) as to the fact of and the circumstances of the Security Breach of the Customer's particular information. Additionally, Recipient

must cooperate fully with all government regulatory agencies and/or law enforcement agencies having jurisdiction and authority for investigating a Security Breach and/or any known or suspected criminal activity. Except as may be strictly required by applicable law, Recipient agrees that it will not inform any third party of any such Security Breach without Owner's prior written consent; however, if such disclosure is required by applicable law, Recipient agrees to work with Owner at no additional cost to Owner regarding the content of such disclosure.

23. AGREEMENT TO PAY ATTORNEYS' FEES: If it is determined in a judicial proceeding that the Participating 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 Participating Lender, then U.S. Bank shall be reimbursed by the Participating Lender on demand for reasonable attorneys' fees and other out-of-pocket expenses.

24. ACCEPTANCE: This Agreement shall become binding upon acceptance and execution by U.S. Bank.

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

Participating Lender: _____

U.S. Bank National Association

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____