

NEW MEXICO MORTGAGE FINANCE AUTHORITY  
SINGLE-FAMILY HOMEOWNERSHIP PROGRAMS  
AMENDED AND RESTATED MORTGAGE PURCHASE MASTER AGREEMENT

This Amended and Restated Mortgage Purchase Master Agreement (the “Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_ (“Mortgage Lender”) and the New Mexico Mortgage Finance Authority (“MFA”).

RECITALS

WHEREAS, MFA makes funds available through its single-family homeownership programs for the purchase of eligible mortgages from approved mortgage lenders;

WHEREAS, Mortgage Lender desires and has sought approval from MFA to become an MFA-approved mortgage lender so that it may make loans to borrowers using MFA’s single-family homeownership programs and sell eligible mortgages to MFA or to an entity designated by MFA;

WHEREAS, Mortgage Lender may also execute a separate mortgage purchase contract with MFA and MFA’s Contracted Service Provider (as that term is defined below in this Agreement), the purpose of which is to establish Mortgage Lender as an approved seller of eligible mortgages with MFA and MFA’s Contracted Service Provider; and

WHEREAS, MFA desires to authorize Mortgage Lender to sell mortgages eligible under MFA’s single-family homeownership programs as set forth in this Agreement.

NOW, THEREFORE, in exchange for the mutual covenants, provisions, and considerations set forth in this Agreement and the Mortgage Purchase Contract, if applicable, the receipt and sufficiency of such consideration is hereby acknowledged, and with every intention to be legally bound, MFA and Mortgage Lender hereby agree as follows:

SECTION 1: DEFINITIONS

The following capitalized terms shall have the meanings given them for purposes of this Agreement unless otherwise noted in this Agreement:

“Acquisition Cost” means the cost of acquiring Residential Housing financed with the Mortgage Loan as a completed residential unit, including: (i) all amounts paid, either in cash or in kind, by the mortgagor (or a related party or for the benefit of the mortgagor) to the seller (or a related party or for the benefit of the seller) as consideration for the residence; (ii) the contract price of the land appurtenant to the residence; (iii) if the residence is incomplete, the reasonable cost of completing it, whether or not the cost of completing construction is to be financed with funds made available by the issuance of Bonds; and (iv) if the residence is purchased subject to a ground lease, the capitalized value of the ground rent calculated using a discount rate established by MFA. Acquisition Cost shall not include: (i) settlement or financing costs which exceed the usual and reasonable costs which would be paid by the mortgagor where financing is not provided through the issuance of Bonds; (ii) the value of services performed by the mortgagor or members of his or her family (“family” shall include only the mortgagor’s brothers, sisters, spouse, ancestors

and lineal descendants) in completing the residence; (iii) non-attached fixtures and other items of moveable personal property included in the contract price of the Residence; or (iv) the cost of land which has been owned by the mortgagor for at least two (2) years prior to the date on which construction of the Residence begins.

“Acquisition Cost Limits” means the maximum Acquisition Costs for Existing Housing and New Construction established by MFA from time to time. The Acquisition Cost Limit applicable to Residential Housing financed with a Mortgage Loan is set forth in the Program Documents applicable to each of MFA’s Programs. Acquisition Cost Limits are subject to change and may be amended by MFA from time to time.

“Act” means the Mortgage Finance Authority Act, Sections 58-18-1 through 58-18-27 inclusive, and Section 2-12-5, New Mexico Statutes Annotated 1978.

“Authorized Officer” means any person designated as an authorized officer of a Mortgage Lender.

“Closing” means, with respect to a Mortgage Loan, the date financing for the Mortgage Loan is provided by the Mortgage Lender to the mortgagor(s).

“Co-Borrower” means, with respect to a Mortgage Loan, each person who is expected both to live in the single-family residence being financed with the Mortgage Loan and be personally liable on the Mortgage Loan, directly as signer, guarantor or surety.

“Code” means the Internal Revenue Code of 1986, as amended, and including all applicable regulations, whether temporary, proposed or final, promulgated thereunder.

“Compliance Approval” means, with respect to a Mortgage Loan, the commitment to a Mortgage Lender, subject to the terms of this Agreement, that a Mortgage Loan is eligible to be financed with a portion of funds made available by MFA through its Programs, evidenced by, and subject to the terms and conditions set forth in the Mortgage Purchase Contract and the applicable Program Documents.

“Commitment” means, with respect to a Mortgage Loan, the commitment to a Mortgage Lender to reserve a portion of funds made available by MFA through its Programs at a specified interest rate and to purchase eligible Mortgage Loans in conjunction with the Program Documents, including the Loan Reservation/Lock Commitment, Compliance Approval/Loan Purchase Commitment and DPA Mortgage Loan Commitment.

“Compliance File” means, with respect to a Mortgage Loan, the documents required to be submitted by the Mortgage Lender to MFA, MFA’s Contracted Service Provider and/or MFA’s designee, as set forth in the Program Documents, to request Compliance Approval in accordance with MFA’s Program Documents.

“Contracted Service Provider” means the entity or entities that MFA may contract with to facilitate the purchase of Mortgage Loans as described more fully in the Program Documents.

“Co-Signer” means, with respect to a Mortgage Loan, a person who is an obligor under the Mortgage Note but who is not a mortgagor; i.e. a person who has executed the Mortgage Note but who has not executed the Mortgage.

“Current Annual Household Income” has the meaning defined in the Program Documents for each of MFA’s Programs.

“Early Payment Default” means a Mortgage Loan in which the borrower(s) fails to make a scheduled mortgage payment within the first 90 days of the first payment due date, fails to cure and subsequently goes into default.

“Eligible Borrower” means a borrower who meets the income and all other eligibility guidelines for the applicable Program, as set forth in the Program Documents.

“Eligible Mortgage Lender” means a lending institution approved by MFA, its Contracted Service Provider and/or its designee, as applicable, to originate loans under MFA’s Programs. Eligible Mortgage Lender has the same meaning as “Participating Lender” in the Program Documents.

“Eligible Mortgage Loan” means a Mortgage Loan for Residential Housing that conforms to all of the applicable terms, conditions, representations, and warranties set forth in the Program Documents that were in effect at the earlier of the time that a Mortgage Loan (i) has been locked, as demonstrated by a fully-executed Reservation/Lock Commitment, or (ii) has received Compliance Approval, as demonstrated by a fully-executed Compliance Approval/Loan Purchase Commitment.

“Existing Housing” means, with respect to a Residence financed with a Mortgage Loan, Residential Housing that has been occupied as a Residence prior to the Mortgage Loan Closing.

“Family” means, with respect to a Mortgage Loan, each Eligible Borrower, each Co-Borrower and any other person who is related to any of the foregoing individuals by blood, marriage or by operation of law and who is expected to live in the Residence as their primary residence being financed with the Mortgage Loan.

“FDIC” means the Federal Deposit Insurance Corporation and any agency or instrumentality of the United States of America succeeding to the deposit insurance functions thereof.

“FHA” means the Federal Housing Administration of the Department of Housing and Urban Development of the United States of America and any agency or instrumentality of the United States of America succeeding to the mortgage insurance functions thereof.

“Fannie Mae” and “FNMA” means the Federal National Mortgage Association and any agency or instrumentality of the United States of America succeeding to the secondary mortgage market functions thereof.

“Freddie Mac” and “FHLMC” means the Federal Home Loan Mortgage Corp. and any agency or instrumentality of the United States of America succeeding to the secondary mortgage market functions thereof.

“Ginnie Mae” and “GNMA” means the Government National Mortgage Association and any agency or instrumentality of the United States of America succeeding to the secondary mortgage market functions thereof.

“Household” means, with respect to a Mortgage Loan, a person or a group of persons consisting of each person executing the related Mortgage.

“Income Limits” means the maximum income limits for Families as set forth in the applicable Program Documents. Income Limits are subject to change and may be amended by MFA from time to time.

“Master Agreement” or “Agreement” means this Amended and Restated Mortgage Purchase Master Agreement executed by MFA and an Eligible Mortgage Lender.

“MFA” means the New Mexico Mortgage Finance Authority, a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, created by the Mortgage Finance Authority Act, which consists of Section 58-18-1 through 58-18-27, inclusive, as well as Section 2-12-5 of the New Mexico Statutes Annotated 1978.

“MFA Programs” means any single-family homeownership program through which MFA makes funds available to Eligible Borrowers in accordance with this Agreement and includes the First Home, First Down, Next Home and any other program MFA may offer as described in the Program Documents.

“Mortgage” means a mortgage, mortgage deed, deed of trust or other instrument securing a Mortgage Loan and creating a first or second lien on: (i) a fee interest in real property located in the State; or (ii) a leasehold on a fee interest which has a remaining term at Closing that exceeds the maturity date of the Mortgage Loan by at least ten (10) years.

“Mortgage Lender” means, with respect to a Mortgage Loan, the lending institution that has executed a Mortgage Purchase Contract and a Master Agreement.

“Mortgage Loan” means a loan of a specified sum of money: (i) made by a Mortgage Lender to an Eligible Borrower to finance the acquisition of Residential Housing, which loan is fully disbursed at closing of such loan; (ii) evidenced by a Mortgage Note and secured by a Mortgage on Residential Housing for which Mortgage Lender has first lien position; and (iii) offered for purchase to or purchased by MFA or MFA’s Contracted Service Provider pursuant to a Mortgage Purchase Contract, this Master Agreement and/or applicable Program Documents.

“Mortgage Loan Amount” means, with respect to a Mortgage Loan, the original principal balance of the Mortgage Loan (including any mortgage insurance premium or mortgage guaranty funding fee) set forth in the applicable Program Documents.

“Mortgage Loan Application” means, with respect to a Mortgage Loan, the mortgagor’s final Mortgage Loan application on Fannie Mae Form 1003, HUD Form 92900, VA Form 26-1802a or the equivalent.

“Mortgage Note” means a promissory note executed by an Eligible Borrower and Co-Signer (if applicable) evidencing such borrower’s obligation to repay a Mortgage Loan.

“Mortgage Note Rate” means, with respect to a Mortgage Loan, the rate of interest payable on a Mortgage Loan set forth in the applicable Program Documents.

“Mortgage Purchase Contract” means, with respect to a Mortgage Loan, if applicable, the written agreement between MFA and/or MFA’s Contracted Service Provider and Eligible Mortgage Lenders under the respective Program that sets forth the terms and conditions of the sale of Mortgage Loans from Eligible Mortgage Lenders to MFA or MFA’s Contracted Service Provider, as applicable.

“New Construction” means, with respect to a residence being financed with a Mortgage Loan, Residential Housing that has not been occupied as a Residence prior to the Mortgage Loan Closing.

“Notice of Funds Availability” or “NOFA” means, with respect to a Mortgage Loan, the written Notice of Availability of Funds, as amended from time to time.

“Participating Lender” means an Eligible Mortgage Lender that is actively delivering Mortgage Loans for purchase by MFA or MFA’s Contracted Service Provider.

“Private Mortgage Insurance Policy” means a private mortgage insurance policy or policies, if any, or any replacement policy or policies, to be maintained for a Mortgage Loan.

“Private Mortgage Insurer” means a private insurance company that provides, or may have provided, a Private Mortgage Insurance Policy with respect to a Mortgage Loan.

“Privately Insured” means, with respect to a Mortgage Loan, insured under an individual Private Mortgage Insurance Policy issued by a Private Mortgage Insurer in an amount required by the MFA’s Contracted Service Provider.

“Program Documents” means all approved policies and procedures for the Programs as they may be amended from time to time, including, as applicable for each Program, the Compliance Manual, Lender Guide, Program Policies, Reservation and Compliance Procedures, Notice of Funds Availability, Reservation/Lock Commitment, Compliance Approval/Loan Purchase Commitment, MFA Compliance Addendum, Down Payment Assistance (DPA) Mortgage Loan Commitment, HUD Rider, Tax Exempt Financing Rider, Affidavit of Purchaser, Affidavit of Seller, VA Rider and Recapture Notice. The Program Documents are incorporated herein by reference and may be amended by MFA from time to time, and such Program Documents as amended will become effective and binding upon the Mortgage Lender upon notice to the Mortgage Lender without amendment of this Agreement. Current Program Documents are available on MFA’s website.

“Programs” means “MFA Programs”.

“Repurchase” means Mortgage Lender’s obligation to buy back any Mortgage Loan previously purchased by MFA, its Contracted Service Provider, or its designee pursuant to the terms of this Agreement or the applicable Program Documents.

“Reservation” or “Lock” means, with respect to a Mortgage Loan, MFA’s commitment to the Mortgage Lender to reserve a portion of the funds made available by MFA by the issuance of Bonds or other funding source to finance a Mortgage Loan made by the Mortgage Lender at a specified interest rate pursuant to the applicable Program Documents, including the Reservation/Lock Commitment and DPA Mortgage Loan Commitment.

“Reservation and Compliance Procedures” means, with respect to a Mortgage Loan, the written procedures for obtaining Reservations and Compliance Approval for Mortgage Loans, as amended from time to time, which are incorporated by reference in the Compliance Manual.

“Residential Housing” or “Residence” means an owner-occupied, single-family residence located in the State. Other requirements for Residential Housing and Residences are set forth in the Program Documents.

“RHS” means Rural Housing Service of the Department of Agriculture of the United States of America formerly known as FmHA, RHCDS and any agency or instrumentality of the United States of America succeeding to the mortgage guarantee functions thereof.

“Rules and Regulations” means the Rules and Regulations of the New Mexico Mortgage Finance Authority pertaining to Eligible Mortgage loans, as supplemented or amended from time to time.

“State” means the State of New Mexico.

“Targeted Area” means, with respect to a Mortgage Loan, any area within the State identified as such by MFA in a Notice of Availability of Funds or on MFA’s website. Targeted Areas are subject to change and may be amended by MFA from time to time.

“VA” means the Department of Veterans Affairs of the United States of America and any agency or instrumentality of the United States of America succeeding to the mortgage guarantee functions thereof.

## SECTION 2: ISSUANCE OF COMMITMENTS

MFA, its Contracted Service Provider, or its designee will issue Commitments for Mortgage Loans to Mortgage Lenders on the terms and subject to the conditions set forth in this Agreement and the applicable Program Documents. In exchange for the receipt of a Commitment, Mortgage Lender shall certify to MFA and/or the Contracted Service Provider, as applicable, the eligibility of Mortgage Loans for financing with proceeds from the respective funding source subject to the conditions contained in the Program Documents.

### SECTION 3: MORTGAGE LENDER'S DUTIES AND OBLIGATIONS

In exchange for its eligibility to make Mortgage Loans and sell Mortgage Loans for MFA's Programs and sell those Mortgage Loans to MFA, MFA's Contracted Service Provider or MFA's designee, Mortgage Lender shall have the following duties and obligations with respect to its on-going participation in the Programs:

(a) Comply with all requirements of the Program Documents as they are amended from time to time; provided, however, that any amendment to the Program Documents shall not affect any Mortgage Loan that (i) has been locked, as demonstrated by a fully-executed Reservation/Lock Commitment, or (ii) has received Compliance Approval, as demonstrated by a fully-executed Compliance Approval/Loan Purchase Commitment;

(b) Obtain all documents and information required to process Eligible Mortgage Loans in order to obtain Commitments from MFA, including, but not limited to the documents described in the Program Documents;

(c) Review and evaluate potential borrower's eligibility for the applicable MFA Program(s);

(d) Conduct such investigation as is necessary to ensure and certify that Eligible Borrowers have satisfied all requirements of the applicable MFA Program, including those imposed by the Code;

(e) Fully and completely investigate statements made in any affidavits delivered to MFA which investigation shall include, without limitation: (i) an examination of the Current Annual Household Income of each person applying for a Mortgage Loan; (ii) to the extent reasonably necessary, an examination of written leases, receipts, credit reports and other records pertaining to the previous addresses of each person applying for a Mortgage Loan; (iii) to the extent reasonably necessary, an investigation of employment records of each person applying for the Mortgage Loan; and (iv) such further investigation as MFA shall require or Mortgage Lender shall determine to be necessary to assure complete compliance with the MFA Program requirements to including those of the Code and this Agreement;

(f) Process applications for Mortgage Loans on approved MFA and/or the Contracted Service Provider Program Documents and;

(g) immediately notify MFA if, at any time prior to the purchase of any Mortgage Loan by MFA or the Contracted Service Provider, it learns of: (i) cash transactions designed to circumvent the applicable Acquisition Cost Limit; (ii) any misrepresentation of a borrower's Current Annual Household Income; (iii) a borrower's intentional failure to not occupy the Residence as the borrower's principal residence within 60 days of Closing; or (iv) a borrower's intention to use of more than fifteen percent (15%) of the area of the property primarily in a trade or business, or as a vacation or recreational home;

(h) Comply with all applicable provisions of the Code and the Act, as well as other applicable state and federal laws, MFA's Rules and Regulations, and the Program Documents then in effect for each Mortgage Loan;

(i) Promptly forward to MFA all information that it may receive at any time prior to the purchase of any Mortgage Loan by MFA or the Contracted Service Provider indicating that a borrower may have made a misrepresentation of fact in connection with his or her application or that may affect the borrower's continued eligibility for the Program;

(j) Repurchase any Mortgage Loan that Mortgage Lender sells to MFA, MFA's Contracted Service Provider, or MFA's designee, that is not an Eligible Mortgage Loan. Without limitation, Mortgage Lender hereby agrees to Repurchase any Mortgage Loan previously sold to MFA, MFA's Contracted Service Provider or MFA's designee, as applicable, as follows: (i) such Mortgage Loan is identified at any time to have origination errors of any type that render the Mortgage Loan uninsurable by loan guarantors or unsaleable to Ginnie Mae, Fannie Mae or Freddie Mac, (ii) such Mortgage Loan is in default under the provisions of Early Payment Default described in this Agreement, (iii) upon the occurrence of fraud, gross negligence or willful misconduct on the part of the Mortgage Lender; or (iv) the occurrence of any repurchase obligation under the Mortgage Purchase Contract. Other repurchase requirements are set forth in MFA's Program Documents as they may be updated from time to time and become binding upon Mortgage Lender as provided in Section 11 of this Agreement;

(k) Use reasonable efforts to encourage origination of Mortgage Loans in Targeted Areas and cooperate with MFA to make known to the public and real estate community the favorable loan terms offered by MFA for purchase financing in Targeted Areas. MFA shall publish a list of Targeted Areas in Notices of Availability of Funds and the MFA website and shall notify the Mortgage Lender of any changes in Targeted Areas.

#### SECTION 4: ELIGIBLE BORROWERS AND PROPERTY

MFA and/or its Contracted Service Provider will issue Commitments only with respect to Mortgage Loans that meet the applicable Program requirements as defined and set forth in MFA's Program Documents, which include, among other things, the following requirements:

4.01 Income Limits. The Eligible Borrower's Current Annual Household Income does not exceed the Program Income Limits as specified in the applicable Program Documents.

4.02 Ownership Interest in Residential Housing. Where an Eligible Borrower's status is as a: (i) first-time homebuyer, the borrower shall not have had an ownership interest in any principal residence (other than a manufactured home that was not permanently affixed to a foundation on real property so as to constitute real property) for the period of time identified in the applicable Program Documents, or (ii) non first-time homebuyer, the borrower shall occupy the Residence as their principle residence.

4.03 Acquisition of Residential Housing. The Mortgage Loan must be made to finance the acquisition of Residential Housing.

4.04 Acquisition Cost Limits. The Acquisition Cost of the Residence does not exceed the Acquisition Cost Limit.



4.05 Loan Amount. The maximum principal amount of the Mortgage Loan (exclusive of amounts loaned to finance mortgage insurance or guarantee fees) does not exceed the Acquisition Cost of the Residence.

## SECTION 5: FEES

MFA, at its discretion, sets the allowable compensation for Mortgage Loans originated under the Programs as defined in the applicable Program Documents. Mortgage Lenders may charge reasonable and customary fees for processing, underwriting or closing the Mortgage Loan; provided, however, that Mortgage Lender may not charge any fee in connection with the Mortgage Loan in excess of the fee that would be charged to a potential borrower applying for a similar mortgage loan (FHA, Fannie Mae, Freddie Mac, RHS or VA) not provided in connection with MFA's Program(s). Fees may also be restricted in the applicable Program Documents.

## SECTION 6: REGULATORY REQUIREMENTS / MORTGAGE LENDER PARTICIPATION

In exchange for its participation in the Programs, Mortgage Lender hereby further agrees as follows:

6.01 Retention of Mortgage Loan files. The Mortgage Lender shall retain a complete copy of the Mortgage Loan file for at least three (3) years and maintain compliance with regulatory and legal requirements regarding document and record retention. The Mortgage Lender must provide MFA with a copy of its records upon request.

6.02 Right to Audit. MFA and its agents shall have the right to examine, audit and inspect the Mortgage Lender's books and records relating to any Mortgage Loan originated in connection with any of MFA's Programs. Mortgage Lender shall grant MFA and its agent's access to such books and records during normal business hours upon MFA's request. Any examination or audit made on MFA's behalf will be conducted during regular business hours unless Mortgage Lender agrees otherwise. In addition, Mortgage Lender shall deliver to MFA any documents requested by MFA that in MFA's opinion are necessary to MFA's purchase of a Mortgage Loan.

6.03 Training. Mortgage Lender shall maintain qualified staff with demonstrated ability and experience in mortgage loan origination, processing, underwriting, closing and post-closing functions. Mortgage Lender shall at all times conduct its business utilizing proper and acceptable business practices and standards and shall employ and maintain qualified personnel to receive, process and administer applications for Mortgage Loans under MFA Program(s) and to carry out its obligations arising under this Agreement.

6.04 Financial Review. If not publicly available, Mortgage Lender shall submit to MFA Mortgage Lender's fiscal year-end audited financial statements and a report as of the date of audit from Mortgage Lender's independent certified public accountants, stating that such accountants have made an examination of Mortgage Lender's records and documents, including those relating to Mortgage Loans serviced for MFA (if any), in accordance with the most current requirements of the Uniform Single Audit Program for Mortgage Bankers and that the examination embraced the documents held by Mortgage Lender with respect to Mortgage Loans serviced for MFA, and such other items as reasonably may be requested by MFA from Mortgage Lender. If not publicly

available, the independent audit and report shall be submitted to MFA annually and shall not be more than 6 months dated. MFA, in its sole discretion, may waive the independent certified public accountants' report requirement if the Mortgage Lender is supervised and examined by a state or federal regulatory agency. Mortgage Lender shall submit to MFA, upon request, such other financial statements, call reports (if applicable), and financial reports filed with Fannie Mae, Freddie Mac or Ginnie Mae, as MFA may require from time to time.

6.05 Consumer Complaint Tracking. Mortgage Lender shall be responsible for reviewing and reporting all consumer complaints received in accordance with applicable regulatory requirements, including those set forth by Dodd-Frank and the Consumer Financial Protection Bureau. Mortgage Lender is responsible for responding to all consumer complaints as required by law and must maintain a tracking mechanism for all consumer complaints received, regardless of validity, which provides data on the type of consumer complaints received and the final resolution of the consumer complaints. Mortgage Lender shall provide to MFA its consumer complaint tracking policy and procedures.

6.06 Regulatory Supervision. Mortgage Lender shall comply with all statutes, laws, rules and regulations applicable to its activities under this Agreement, including without limitation, rules or regulations of Mortgage Lender's supervisory agency or other regulatory body that has jurisdiction over the Mortgage Lender. At all times, Mortgage Lender shall be properly licensed and in compliance with Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and all other applicable registration requirements governing lending and mortgage related activities, including but not limited to those of the Consumer Financial Protection Bureau.

#### SECTION 7: PAYMENT OF COSTS AND EXPENSES

Mortgage Lender shall pay all costs of preparing and furnishing to MFA all documents and information required by this Agreement and any and all other expenses incurred in connection with the transactions contemplated by this Agreement, including, without limitation, recording, filing and photocopying fees and attorney's fees. This Section 7 shall not preclude Mortgage Lender from charging borrowers the fees described in Section 5 hereof.

#### SECTION 8: MORTGAGE LENDER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Mortgage Lender hereby represents, warrants, and covenants to MFA as follows:

(a) Mortgage Lender is an Eligible Mortgage Lender as defined in MFA's Rules and Regulations and Program Documents;

(b) Mortgage Lender is duly organized, validly existing and in good standing under the laws of the state of its organization and has the power and authority to own its properties and carry on its business as now being conducted and is duly qualified to do such business wherever such qualification is required;

(c) Mortgage Lender and its agents, officers, employees and other personnel acting on its behalf have full legal authority to engage in the transactions contemplated by this Agreement and to obligate Mortgage Lender to comply with the terms, conditions, and provisions of this

Agreement. Mortgage Lender's compliance with the terms, conditions, and provisions of this Agreement will not conflict with or result in a breach or default of any of the terms, conditions or provisions of the charter or bylaws of the Mortgage Lender or any agreement or instrument to which the Mortgage Lender is now a party or by which it is bound;

(d) Mortgage Lender is familiar with MFA's Programs, the Code, the Act, all provisions of state and federal law applicable to each of the Programs, the Program Documents, MFA's Rules and Regulations, and all other rules or regulations applicable to each of the Programs;

(e) Each copy of a document delivered to or submitted for inspection by MFA or its Contracted Service Provider in connection with any application for a Mortgage Loan in connection with each of the Programs shall be a true, correct and complete copy of the original thereof or shall be the original document, if requested;

(f) Mortgage Lender shall at all times during this Agreement and at its expense maintain in effect a fidelity bond (or surety bond) and mortgage errors and omissions insurance covering all agents, officers, employees and other personnel of the Mortgage Lender. Such coverage shall be equal to or greater than the minimum coverage required by, or acceptable to Fannie Mae, Ginnie Mae or Freddie Mac. The terms of such coverage shall provide for deductibles that do not exceed the maximum deductible amounts permitted by Fannie Mae, Ginnie Mae or Freddie Mac. The Mortgage Lender shall provide a Certificate of Insurance listing MFA as a named insured. No less than annually, and upon request, the coverage, deductibles and underwriters of the Mortgage Lender's fidelity bond (or surety bond) and mortgage errors and omissions insurance policy shall be reported by the Mortgage Lender to MFA or evidence of such coverage shall be delivered to MFA. Mortgage Lender shall obtain its insurer's written agreement to promptly notify MFA in writing if a fidelity bond (or surety bond) or mortgage errors and omissions policy is cancelled for any reason. In addition and notwithstanding the foregoing, Mortgage Lender shall promptly notify MFA of any insurer's cancellation of a fidelity bond (or surety bond) or mortgage errors and omissions policy or its refusal to renew a fidelity bond (or surety bond) or mortgage errors and omissions policy at the expiration of a premium period. Mortgage Lender shall also notify MFA of any more restrictive terms required by any insurer as a condition for renewal.

Mortgage Lender shall promptly notify MFA of all cases of embezzlement, fraud, criminal or dishonest acts by any agent, officer, employee, or other personnel of Mortgage Lender whether or not MFA funds are involved. Mortgage Lender shall promptly notify MFA of any claims made against its fidelity or surety bonds or any mortgage errors and omissions policy;

(g) Mortgage Lender is a bank, bank or trust company, trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, building and loan association or other lending institution;

(h) Mortgage Lender is authorized and licensed to make Mortgage Loans in New Mexico;

(i) Mortgage Lender has as one of its principal purposes in its regular, usual and normal course of business the origination, processing and closing of Mortgage Loans for Residential Housing;

(j) Mortgage Lender has and maintains at least one branch office in New Mexico, open to the public, staffed with experienced personnel who originate, process and/or close Mortgage Loans for the Mortgage Lender secured by Mortgages for Residential Housing;

(k) Mortgage Lender is an approved seller for a national purchaser of Mortgage Loans and if the borrower is participating in a community homebuyer program of Fannie Mae or Freddie Mac (if available) then all applicable requirements of Fannie Mae or Freddie Mac, as applicable, and any private mortgage insurer under such program have been met;

(l) Mortgage Lender is an FHA-approved or VA-approved mortgagee;

(m) Mortgage Lender has continuously operated, for the preceding two (2) years, one or more Mortgage Loan origination offices;

(n) Mortgage Lender has and maintains, in the form of assets acceptable to the MFA, as reflected in its most recent quarterly financial statements, a net worth that satisfies the requirements of HUD, Ginnie Mae, Fannie Mae or Freddie Mac;

(o) Mortgage Lender has and maintains an adequate and reliable warehouse line of credit or other Mortgage Loan funding source in an amount sufficient to enable the Mortgage Lender to disburse Mortgage Loan proceeds at the time of Closing for all Mortgage Loans for which a Commitment has been issued to the Mortgage Lender by MFA;

(p) Mortgage Lender has and shall maintain fidelity coverage and mortgage errors and omissions insurance as required in this Agreement;

(q) Mortgage Lender is not in default or breach of any agreement with MFA;

(r) Mortgage Lender is approved by the applicable private mortgage insurer;

(s) if Mortgage Lender is a savings institution or a commercial bank, its deposits are insured by the FDIC; and if a credit union, its deposits are insured by the NCUA and Mortgage Lender has complied with any applicable federal or state laws, regulations or other requirements on consumer credit, equal credit opportunity and truth-in-lending;

(t) Mortgage Lender is and will continue to be duly incorporated or 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 the state of New Mexico and in any other state where an application for a Mortgage Loan is processed, if the laws of such state require licensing, registration or qualification in order to conduct business of the type conducted by the Mortgage Lender;

(u) No action, suit, proceeding, inquiry or investigation pending or threatened against Mortgage Lender that would be likely to result in any material adverse change in business, operations, financial condition, properties, or assets of Mortgage Lender, or in any material liability on the part of the Mortgage Lender, or which would draw into question the validity of this Agreement, the Mortgage Loan or of any action taken or to be taken in connection with the obligations of Mortgage Lender contemplated herein, or which would be likely to impair materially the ability of Mortgage Lender to perform under the terms of this Agreement; and

(v) All representations and warranties made by Mortgage Lender in its application to MFA to participate in MFA's Programs are true and correct.

(w) Mortgage Lender must provide to MFA immediate notice of a change in its status or ownership, including any: (A) sale or transfer of a majority interest in it; (B) merger; (C) consolidation; and/or (D) change in legal structure.

(x) Mortgage Lender agrees to meet the following general requirements:

(i) The Mortgage Lender must have the authority and engage in the making of Mortgage Loans of the type that MFA will purchase entirely under the Agreement. In addition, Mortgage Lender, in the judgment of the MFA, must have at all times the capacity to originate and sell Mortgage Loans that meet the Program Document requirements and the standards generally imposed by FHA, Ginnie Mae, Fannie Mae or Freddie Mac and private institutional mortgage investors, as applicable, and must meet all the requirements for Mortgage Lenders set forth in the Program Documents. MFA may check to insure Mortgage Lender is not included on an exclusionary list for any FHA, RHS or VA mortgage or other mortgage MFA is authorized to purchase under the Program Documents or any other exclusionary list kept by private institutional mortgage investors.

(ii) Mortgage Lender must, at all times, have employees who are well trained and qualified to perform the functions required of the Mortgage Lender under this Agreement and must maintain facilities that are adequate to perform its functions under this Agreement.

(iii) Mortgage Lender must notify the MFA promptly in writing of any changes that occur in its principal purpose, activities, staffing or facilities.

(iv) Mortgage Lender will notify MFA of a merger or transfer and MFA shall have the right to review the qualifications of the new entity to process Fannie Mae or Freddie Mac community homebuyer program loans and have the right to approve of that new entity if it is not already an approved lender, which approval will not be unreasonably withheld.

(y) Mortgage Lender agrees to promptly cooperate with MFA to resolve any defects in any Mortgage Loan that arise from a review by MFA of the Mortgage Loan file, as provided in a written notice to Mortgage Lender from MFA.

(z) Mortgage Lender agrees to provide notice to MFA of (i) any material changes in Mortgage Lender's net worth; (ii) any unfavorable outcome resulting from a third-party audit, suspension or termination by an investor or warehouse bank; (iii) any change in senior management; (iv) any suspension or termination of Mortgage Lender's seller/servicer status with Ginnie Mae, Fannie Mae, or Freddie Mac and (v) any event or unresolved issues with FHA, VA, RHS, Private Mortgage Insurer or state or federal regulatory agencies that directly impact the Mortgage Lender's ability to perform its obligations or meet the requirements set forth herein or in the Program Documents.

(aa) Mortgage Lender agrees to complete within 120 days of purchase of each Mortgage Loan any required documentation, subject to MFA review and approval. If Mortgage Lender does not provide such documents for each Mortgage Loan within 180 days of purchase of such Mortgage Loan, such Mortgage Loan shall be subject to repurchase as set forth in Section 3(j) hereof.

(bb) Mortgage Lender makes the following representations relating to the Mortgage Loan and property:

(i) The Mortgage Loan and any security agreements, chattel mortgages, or equivalent documents relating to it have been properly signed, are valid, and their terms are enforceable against Mortgage Lender.

(ii) The property subject to the Mortgage Loan is free and clear of all mechanics' liens, material men's liens or similar types of liens. There are no rights outstanding that could result in any of such liens being imposed on the property.

(iii) There is a mortgage title insurance policy, or other title evidence acceptable to MFA in its sole discretion, on the property. The title insurance policy is on a current ALTA form (or other generally acceptable form) issued by a generally acceptable insurance company.

The title insurance insures (or the other title evidence protects) MFA or the Mortgage Lender and its successors and assigns, as holding a lien of the priority set forth in the definition of "Mortgage Loan".

(iv) The Mortgage Lender has not (1) materially modified the Mortgage or any documents evidencing the Mortgage Loan; (2) satisfied or canceled the Mortgage in whole or in part; (3) subordinated the Mortgage in whole or in part; (4) released the property in whole or in part from the lien of the Mortgage; or (5) signed any release, cancellation, modification or satisfaction of the Mortgage.

- (v) There are no defaults under the Mortgage or any documents evidencing the Mortgage Loan, and all taxes, government assessments, insurance premiums, water, sewer and municipal charges, leasehold payments and/or ground rents have become due and payable have been paid or an escrow of funds sufficient to pay them has been established:
- (vi) Mortgage Lender has not made or knowingly received from others, any direct or indirect advance of funds in connection with the loan transaction on behalf of the borrower except as provided in the Program Documents. This warranty does not cover payment of interest from the earlier of: the date of the Mortgage Loan note; the date on which the Mortgage Loan proceeds were disbursed, or the date one month before the first installment of principal and interest on the Mortgage Loan is due.
- (vii) Mortgage Lender has no knowledge that any improvement to the property is in violation of any applicable zoning law or regulation. The property is not damaged by fire, wind or other cause of loss and there are no proceedings pending for the partial or total condemnation of the property.
- (viii) Any improvements that are included in the appraised value of the property are totally within the property's boundaries and building restriction lines. No improvements on adjoining property encroach on the mortgaged property unless applicable FHA, RHS or VA regulations or the Program Documents permit such an encroachment.
- (ix) The Mortgage Loan is not usurious and either meets or is exempt from any usury laws or regulations.
- (x) A casualty insurance policy on the property is in effect. It is written by a generally acceptable insurance company and provides fire and extended coverage for an amount at least equal to the amount required by the Program Documents. In particular the improvements upon the real property mortgaged to secure the Mortgage Loan are covered by a valid and subsisting policy of hazard insurance with an endorsement by the insurer in favor of the Mortgage Lender, and properly and effectively re-endorsed or assigned to MFA, issued by a company lawfully doing business in the State (or covered under a valid so-called mortgage protection bond, blanket fire and extended coverage), in an amount equal to the unpaid principal amount of the Mortgage Loan or such lesser amount as shall be the maximum insurable value of the improvements and shall be acceptable to MFA, provided, that such

insurance shall pay in full the amount of any partial or total loss to the full amount of such insurance and shall otherwise be sufficient to prevent the mortgagor from being a co-insurer, subject only to such deductible amount as shall be acceptable to MFA, so long as such insurance coverage is obtainable on reasonable rates and terms.

A flood insurance policy is in effect on the property if any part of it is in an area listed in the Federal Register by the Federal Emergency Management Agency as an area with special flood hazards, and if insurance is available. The flood insurance is written by a generally acceptable insurance company, meets current guidelines of the Federal Insurance Administration, and is for an amount at least equal to the amount required by the Program Documents.

Mortgage Lender will make sure the required insurance is maintained as long as it services the Mortgage Loan. Any policy mentioned in this warranty contains a standard mortgage clause that names MFA or Mortgage Lender and its successors and assigns as mortgagee.

- (xi) Mortgage Lender knows of nothing involving the Mortgage Loan, the property, the mortgagor or the mortgagor's credit standing that can reasonably be expected to: cause private institutional investors to regard the Mortgage Loan as an unacceptable investment (other than the interest rate); cause the Mortgage to become delinquent; or adversely affect the Mortgage Loan's value or marketability. In all respects the Mortgage Loan would be a prudent investment for Mortgage Lender's own account, except as provided in the Program Documents, and the proceeds received from the purchase of the Mortgage Loan will reimburse the Mortgage Lender for its investment in said Mortgage Loan.
- (xii) Mortgage Lender represents with respect to any Mortgage Loan sold to MFA, that all applicable requirements of the Program Documents, as well as any requirements for any insurance or guaranty, have been and will be complied with, and that any related insurance or guaranty is and will continue to be in full force and effect. In addition, Mortgage Lender has complied and will comply with all applicable provisions and related regulations of any applicable federal legislation for a Government Mortgage, or the insurance contract, that covers the Mortgage and has sent proper notice to the appropriate agency or firm notifying it of transfer of the Mortgage Loan to MFA.
- (xiii) If the Mortgage Loan provides that the interest rate or the principal balance of the Mortgage Loan may be adjusted, such terms have been approved by MFA and all of the terms of the Mortgage Loan



may be enforced by MFA, our successors and assigns. No adjustments will affect the priority of the lien of the Mortgage.

- (xiv) For Mortgage Loans to be funded with the proceeds of mortgage revenue bonds under the Section 143 of the Code, the Mortgage Loan and the borrower meet all requirements for mortgage revenue bonds as set forth in the Program Documents and in Code.

## SECTION 9: CONTINUING NATURE OF REPRESENTATIONS, WARRANTIES, AND COVENANTS

Mortgage Lender's representations, warranties, covenants and agreements set forth in this Agreement shall survive the closing and delivery of each Mortgage Loan, and MFA's and/or MFA's Contracted Service Provider's purchase of the Mortgage Loan.

## SECTION 10: GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico and applicable federal law.

## SECTION 11: WAIVER OR AMENDMENT OF PROVISIONS OF AGREEMENT

The provisions of this Agreement cannot be waived or amended except in writing signed by both parties. No waiver of any term or condition of this Agreement by MFA shall be deemed to be a continuing waiver. Inaction or failure by any party to this Agreement to demand strict performance thereunder shall not be deemed a waiver.

Notwithstanding the foregoing, the Program Documents may be amended by MFA from time to time and shall become effective and binding upon Mortgage Lender upon notice to Mortgage Lender without the execution of a separate, written amendment to this Agreement.

## SECTION 12: SUCCESSORS

Mortgage Lender shall not assign, transfer, pledge or encumber any of its rights, or delegate any of its duties, under this Agreement without the prior written consent of MFA. No consent by MFA to any assignment, pledge, transfer or encumbrance shall be deemed to release the Mortgage Lender from any of its obligations under this Agreement or to constitute a novation of this Agreement unless otherwise expressly provided in such prior, written consent by MFA.

## SECTION 13: NOTICES AND REQUESTS

Any and all notices and requests made in conjunction with this Agreement, including any notification of changes or amendments to Program Documents, shall be in writing and shall be deemed given and received when such notice(s) are provided to Mortgage Lender or MFA. Notices and requests may be made electronically, by mail, or by professional courier service. The method and manner of providing notices and requests may be changed from time to time in MFA's Program Documents.

## SECTION 14: JURISDICTION AND VENUE

Mortgage Lender hereby submits to the jurisdiction of the District Courts of the State of New Mexico and consents to the Second Judicial District as the venue for any action or proceeding arising out of, or as a result of, this Agreement, or the alleged or anticipated breach of any of the provisions, representations, or warranties of this Agreement and hereby waives any objection to venue in such action being placed in such county in the State as MFA may select.

## SECTION 15: TERM

This Agreement shall become effective upon its execution by Mortgage Lender and MFA. The Agreement shall remain in effect until terminated in accordance with its terms.

## SECTION 16: DEFAULT; ENFORCEMENT

- (a) The following shall constitute events of default under this Agreement:
- (i) If any act or omission of Mortgage Lender in connection with the origination and sale to MFA of any Mortgage Loan causes harm, damage or loss to MFA, or Mortgage Lender sells MFA any Mortgage Loan knowing that any of the representations and warranties set forth herein with respect to such Mortgage Loan are untrue;
  - (ii) If Mortgage Lender does not comply with any of the provisions or obligations set forth in this Agreement or the Program Documents through any act or omission, including, without limitation, the following:
    - (1) failure to establish and maintain any accounts for MFA's funds or mortgagor's funds as required by the Program Documents;
    - (2) use of MFA's or mortgagor's funds in any manner other than that permitted by the Program Documents, including Mortgage Lender's failure to deposit all mortgage funds if, when, and to the extent required by the Program Documents;
    - (3) failure to remit all funds due to MFA within the time periods required by the Program Documents; or
    - (4) failure at any time to meet MFA's standards for eligible mortgage sellers so that, in MFA's sole discretion, Mortgage Lender's ability to comply with this Agreement or the Program Documents is adversely affected; or

(iii) Any fraud, willful misconduct or gross negligence on the part of Mortgage Lender or Mortgage Lender or any of its principal officers is convicted of any criminal act related to Mortgage Lender's lending or mortgage selling or servicing activities or that, in MFA's sole discretion, adversely affects Mortgage Lender's reputation or our reputation or interests.

(b) If there is a breach of contract by Mortgage Lender, MFA shall have the right, but not the obligation, to take any reasonable action to have any breach corrected by Mortgage Lender before exercising any rights legally available to MFA, including termination of this Agreement, in whole or in part. Any forbearance by MFA in exercising its remedies or right to terminate this Agreement in whole or in part will not be a waiver of any present or future right MFA has under this Agreement.

#### SECTION 17: TERMINATION

Either party may terminate this Agreement upon sixty (60) days written notice to the other party provided that the termination of this Agreement shall not affect Mortgage Loans already purchased by MFA, MFA's Contracted Service Provider, or MFA's designee.

MFA may, in its discretion, require Mortgage Lender to submit and comply with annual or other periodic re-certification requirements as they may be established by MFA from time to time. Mortgage Lender hereby agrees that its failure to comply with those re-certification requirements shall be cause for immediate termination of this Agreement.

In addition to the foregoing, MFA may immediately terminate this Agreement at any time as a result of Mortgage Lender's breach of any provision of this Agreement, including Mortgage Lender's breach of any of the representations and warranties contained in this Agreement.

#### SECTION 18: SUBSERVICER

MFA may, at its discretion and from time to time, contract for subservicing services with respect to any Mortgage Loan it purchases. MFA has engaged Idaho Housing and Finance Association as servicer.

#### SECTION 19: HEADINGS AND TITLES

Headings and titles in this Agreement are for convenience only and shall not influence the construction or interpretation thereof.

#### SECTION 20: INDEMNIFICATION

Mortgage Lender shall indemnify and hold MFA harmless from and against all losses, damages, judgments and expenses (including reasonable attorneys' fees as they may be incurred) resulting from or caused by its breach of this Agreement, including any breach of Mortgage Lender's representations, warranties, covenants or provisions contained in this Agreement. Mortgage Lender expressly recognizes that representations and warranties made by Mortgage Lender that are not true shall constitute a breach of this Agreement.

## SECTION 21: SEVERABILITY

If any term, covenant, condition or provision of this Agreement is determined, at any time or to any extent, by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

## SECTION 22: ELECTRONIC SIGNATURES

The electronic signature of a party to this Agreement, whether digital or encrypted, shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement with the same force and effect as manual signatures. For purposes hereof, “electronic signature” means any electronic sound, symbol, or process attached to or logically associated with a record executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures.

*[Signature page follows]*

In witness whereof, MFA and Mortgage Lender hereby execute this Agreement.

SIGNED:

Address:

By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

(Typed Name of Signer)

Its:

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New Mexico Mortgage Finance Authority  
344 Fourth Street, SW  
Albuquerque, New Mexico 87102

By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Jeff Payne  
(Typed Name of Signer)

Its:  
Senior Director of Mortgage Operations