



New Jersey Housing and Mortgage Finance Agency  
Single Family Mortgage Programs

## **MORTGAGE PURCHASE AGREEMENT**

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Participating Lender

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Street Address

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City, State, Zip

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Email Address

Revised December 2018

## MORTGAGE PURCHASE AGREEMENT

**THIS MORTGAGE PURCHASE AGREEMENT**, dated \_\_\_\_\_, 20\_\_, (the “Agreement”) between the **NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**, 637 South Clinton Avenue, Trenton, New Jersey 08611 (hereinafter referred to as the “Agency”) and the institution designated as “Participating Lender” on the cover page of this Agreement (hereinafter referred to as the “Participating Lender”).

### WITNESSETH:

In consideration of the warranties, representations and mutual agreements herein set forth, the Agency and the Participating Lender hereby agrees as follows:

#### 1. DEFINITIONS.

Capitalized terms used in this Agreement but not defined herein have the meaning given them in the Agency’s Mortgage Program Policy and Procedures for Participating Lenders (the “Guide”). In addition, the following terms shall, for all purposes of this Agreement, have the following meanings:

- (a) **Document Delivery Date.** With respect to any Mortgage Loan sold or offered for sale to the Agency by the Participating Lender under this Agreement, the date on which all documents and instruments required under the Guide to be delivered by the Participating Lender to the Agency in connection with the sale of the Mortgage Loan have been delivered to the Agency or to any person, firm or corporation designated by the Agency to act on its behalf.
- (b) **Homebuyer Program.** First-loan mortgage products, including First-Time Homebuyer, Homeward Bound, Stay at Home and any and all existing or future first-loan product(s) offered by NJHMFA and financed through Mortgage Backed Securities (MBS) or Mortgage Revenue Bond (MRB) funding. Police and Fire Retirement System (PFRS) loans are not included.
- (c) **Homebuyer Loans.** First-loan mortgages produced under the Homebuyer Program.
- (d) **Investment.** Any funding provided by the Agency by an Investor for the purpose of providing Mortgage Loans.
- (e) **Investor.** Any third party that provides funding or buys securities relating to the Mortgage Loans.
- (f) **Mortgage Loan Delivery Schedule.** The schedule as set forth in the applicable Term Sheet.

- (g) **Mortgage Programs.** The residential single family mortgage loan purchase programs covered by this Agreement and the Guide.
- (h) **Notice Address.** The address to which any notification to the Agency or the Participating Lender required under this Agreement should be provided, unless or until changed pursuant to this Agreement:

(i) as to the Agency:

637 South Clinton Avenue  
P.O. Box 18550  
Trenton New Jersey 08650-2085  
Attention: David Sabol

(ii) as to the Participating Lender: The address and contact information as set forth on the cover of this Agreement.

- (i) **Notice of Acceptance.** The Agency's approval of the Participating Lender to originate Mortgage Loans for Agency purchase.
- (j) **Participation Application.** Any application by which the Participating Lender requests participation in the Agency's Single Family Mortgage Programs for a given year and offers to sell Mortgage Loans to the Agency under such programs.
- (k) **Participation Fee.** The payment made by the Participating Lender of an amount established in an Application as consideration for the Agency's agreement, by acceptance of the Application of the Participating Lender, to purchase Mortgage Loans from the Participating Lender under this Mortgage Purchase Agreement.
- (l) **Prior Approval.** The approval given by the Agency after review of documents submitted to show compliance with the Mortgage Loan eligibility and processing requirements of the Guide, upon which the Participating Lender may issue a Firm Commitment to Mortgagor.
- (m) **Starting Date of Program.** The date Participating Lenders may begin accepting Mortgage Loan applications as specified in the Notice of Acceptance.

## 2. RULES OF CONSTRUCTION.

(a) All warranties, representations, requirements, and terms of the Guide are incorporated into this Agreement by reference, as if fully set forth herein.

(b) To the degree possible, this Agreement, the Guide and the Mortgage Programs' respective Term Sheets and guidelines are to be read in a complementary fashion. However, to the extent that there is a conflict of terms, this Agreement shall take precedence over the Guide and the Mortgage Programs' respective Term Sheets and guidelines. As to conflicts between the Guide and the Terms Sheets or guidelines, the requirements of the Guide shall prevail.

(c) "Must," "shall," and/or "will," even if not capitalized, establish a mandatory requirement; "can," "may," and/or "might," whether or not these terms are capitalized, establish a permissive action.

(d) All terms in this Agreement, including defined terms, may be used in the singular or plural, as the context requires.

### **3. PARTICIPATION.**

After receiving the Notice of Acceptance and full execution and delivery of this Agreement, the Participating Lender may originate Mortgage Loans, which shall comport with the requirements of this Agreement, the Guide and the applicable Term Sheet and guidelines for each Mortgage Program. The Participation Application constitutes an agreement by the Participating Lender to sell to the Agency and by the Agency to purchase from Participating Lender Mortgage Loans pursuant to the terms of this Agreement.

### **4. PURCHASE AND SALE OF MORTGAGE LOANS.**

The Participating Lender agrees to sell and the Agency agrees to purchase Mortgage Loans that have been properly reserved with the Agency, and meet the eligibility requirements of the Agency, and any insurer and/or guarantor thereof, or Investor therein.

(a) Lenders participating in the NJHMFA Homebuyer Program are required to sell a minimum of five (5) closed, first-mortgage NJHMFA Homebuyer Loans annually to the Agency based on calendar year beginning January 1. Failure to meet this requirement shall result in the denial of this contract's renewal for the following calendar year. However, in the event that a Lender may originate less than One Hundred Million Dollars (\$100,000,000) in total first-mortgage volume for the given contracted year in which this requirement was not met, that Lender may be granted an exemption for a contract extension. Furthermore, a Lender which may originate in excess of One Hundred Million Dollars (\$100,000,000) in total first-mortgage volume for the given contracted year may make a Hardship Appeal of the non-renewal decision to the NJHMFA Director of Single Family. Minimum requirements for new Lenders will be pro-rated for the first year. Lenders only participating in the Police and Firemen's Retirement System (PFRS) loan program are exempt from the five-loan per calendar year requirement.

(b) The Participating Lender shall process and report applications for Mortgage Loans and deliver Mortgage Loans to the Agency in accordance with the Mortgage Loan Delivery Schedule.

(c) The Agency shall purchase and pay for each Mortgage Loan properly submitted to it for purchase in accordance with the Guide, applicable Term Sheet, and guidelines upon the receipt of all documentation and exhibits required to clear any conditions that would inhibit purchase, the satisfactory review of all initial collateral documents, and where applicable, upon the issuance of a purchase authorization by the Agency's authorized/designated vendor.

(d) The net purchase price payable by the Agency to the Participating Lender on the Purchase Date for each Mortgage Loan purchased by the Agency shall be as set forth in the Guide. The Mortgage Loans are sold servicing-released and the acquisition of servicing rights by the Agency are included in the purchase fee.

(1) All amounts collected by the Participating Lender for establishing the initial escrow account shall be retained by the Participating Lender and shall be subtracted from the Purchase Price of the Mortgage Loan.

(2) If Participating Lender shall knowingly cause the refinance or payoff of a Mortgage Loan sold to the Agency by that Participating Lender within six (6) months of the Purchase, the Participating Lender shall reimburse the Agency for any servicing release premiums and origination fees paid to Participating Lender in connection with the Mortgage Loan.

(e) The Participating Lender agrees to comply with all of the terms, conditions, and requirements of the Guide, applicable Term Sheet, and guidelines in effect as of the Closing Date with respect to such Mortgage Loans closed thereon unless expressly waived by Agency Staff, in writing, under the process set forth in the Guide.

(f) The Participating Lender agrees that the Agency shall have the right to amend and supplement the Guide, Term Sheets and guidelines for any or all of the Mortgage Programs from time to time by distributing the changed pages via electronic mail and posting on the Agency's website; such amendments or supplements to be effective five (5) business days after the date of the electronic mailing thereof unless otherwise set forth; provided, however, that (i) in the event of any conflict between the provision of this Agreement and any provision of the Guide, Term Sheet, and guidelines as from time to time amended or supplemented, this Agreement shall govern and (ii) any amendments or supplements to the Guide, Term Sheet, and guidelines shall not apply to Mortgage Loans for which the actual Closing Date was prior to the effective date of the amendments or supplements.

## 5. CONDITIONS TO PURCHASE BY THE AGENCY.

The Agency shall be obligated to purchase any Mortgage Loan offered for sale by the Participating Lender under this Agreement only if the Mortgage Loan fully complies with the requirements of this Agreement and the Guide in all respects, including, but not limited to satisfying the following:

(a) The Participating Lender shall follow the reservation, eligibility, and document submission requirements of the Guide for each Mortgage Loan.

(b) The Participating Lender shall pay all costs of preparing and furnishing to the Agency and, if applicable, the insurer and/or guarantor, the Mortgage Documents and the Mortgage Loan file.

(c) As set forth in the Guide, certain Mortgage Documents will be reviewed by the Agency or its duly authorized/designated vendor (who shall be the Agency's designee) prior to accepting the Mortgage Loan for purchase.

(1) For any Mortgage Loan that the Agency or its designee has deemed in whole or in part defective or deficient, the Agency may refuse to purchase the Mortgage Loan, and if applicable, the accompanying down payment assistance loan (i.e. "NJHMFA DPA" or any such similar program that may be offered by the Agency at the time of purchase submission) until the Participating Lender cures any and all defects, if possible, and timely extends the reservation on the Mortgage Loan, the obtaining of and fees for which are the Participating Lender's sole responsibility.

(2) The Agency or its designee shall also complete quality control reviews of Mortgage Loans post-purchase, in a process and timing that satisfies FHA, Fannie Mae, Freddie Mac, or the insurer/guarantor quality control requirements of the subject program under which the Mortgage Loan was originated. The Participating Lender will be required to correct any deficiencies or defects found during such quality control review within sixty (60) days of being so notified by the Agency or the Participating Lender may be required to repurchase the Mortgage Loan.

(3) The Agency's retention of a designee to perform any Mortgage Loan review functions shall not constitute a waiver of any warrant, representation, or covenant by the Participating Lender or the Mortgagor with respect to the Mortgage Loan.

(d) The Agency's timing to review and purchase Mortgage Loans shall take place as set forth in the Guide.

(e) The Mortgage Loan was lawful under all applicable local, State and Federal laws, rules and regulations that govern the affairs of the Participating Lender, the Agency, and the

Mortgagor, including, without limitation, all applicable real estate settlement procedures, truth-in-lending and anti-discrimination laws.

(f) The note evidencing the Mortgage Loan is a legal, valid and binding obligation of the maker thereof and is enforceable in accordance with its terms, and is secured by a first mortgage lien upon the property. No counterclaim, set-off, defense, or right of rescission exists that can be asserted and maintained by the Mortgagor or any successor in interest of the Mortgagor against the Participating Lender or the Agency, as assignee of the Mortgage Loan.

If at any time subsequent to the Agency's purchase and/or securitization of a Mortgage Loan to which the right of rescission may apply, the Mortgagor raises a claim or assertion based on rescission, the Mortgage Loan will be subject to the issuance of an immediate demand for repurchase by the Originating Lender, as well as the issuance of a release of any and all liability of the Agency in relation to the assertion of rescission and any and all underlying claims which may arise as a result of the assertion of rescission.

(g) The Mortgage Loan application was taken and the related Firm Commitment to Mortgagor was made after the Starting Date of Program. The Mortgage Loan was made to finance the purchase of an Eligible Property and all improvements so financed have been fully completed or moneys have been placed in escrow therefore.

(h) The Mortgage Loan shall have been closed by the Participating Lender or its closing agent.

(i) The Mortgage Loan at the time it was made, conformed to all applicable laws, regulations, administrative rules, executive orders and official guidance of the State, Federal government, and/or any other jurisdiction that regulate the issuance of Mortgage Loans in the State, including, without limitation, the Participating Lender's ability to originate the financing; requirements of the Agency's funding sources upon assumption of the Mortgage Loans; and/or provide for consumer and/or investor protection in the advertisement, application, obtaining, and servicing of the Property financing:

- (1) "Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)" (TILA-RESPA Final Rule) of 2012, effective in 2015, and amended 2016. The Act is also known as TILA-RESPA Integrated Disclosures ("TRID") and "Know Before You Owe" ("KBYO");
- (2) The Real Estate Settlement Procedures Act of 1974;
- (3) The Truth in Lending Act of 1968;
- (4) The Equal Credit Opportunity Act;
- (5) The Fair and Accurate Credit Transaction Act of 2003;
- (6) Title VII of the Civil Rights Act of 1968 (also known as the Fair Housing Act);

- (7) The Gramm-Leach-Bliley Act;
- (8) The Helping Families Save their Homes Act of 2009;
- (9) The National Flood Insurance Act of 1968;
- (10) The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (also known as The SAFE Act);
- (11) The USA PATRIOT Act;
- (12) The Dodd-Frank Wall Street Reform and Consumer Protection Act;
- (13) The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA);
- (14) Enabling legislation and regulations of the Participating Lender's Federal prudential regulator and the Federal Financial Institutions Examination Council (FFIEC), as applicable;
- (15) Section 143 of the Internal Revenue Code;
- (16) N.J.S.A. Title 17, Corporations and Institutions for Finance and Insurance and administrative rules promulgated thereunder, N.J.A.C. Title 3 (for State-licensed or –chartered lenders) and N.J.A.C. Title 11;
- (17) The New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.
- (18) The New Jersey Consumer Fraud Law, N.J.S.A. 56:8-1 et seq.;
- (19) The New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1 et seq.;
- (20) N.J.S.A. 43:16A-16.9 through -16.16 (PFRS Mortgage Loan program);
- (21) N.J.S.A. Title 46, Property;
- (22) N.J.S.A. 19:44A-1 et seq.; and
- (23) N.J.S.A. Title 52 as relates to Agency contracting.

The above list shall also be construed by the parties to this Agreement to include any and all laws, regulations, official guidance, and guidelines applicable to the Participating Lender's performance of this Agreement and/or Mortgage Loans originated hereunder during the terms of this Agreement, and which are enacted or promulgated subsequent to execution hereof.

***(j) By accepting payment for each Mortgage Loan on its respective Purchase Date, the Participating Lender shall be deemed to have represented and warranted that all such conditions of this Agreement and the Guide have been met (as to conditions precedent to purchase) or will have been met (as to conditions subsequent to the purchase).***

## **6. PARTICIPATING LENDER REPRESENTATIONS, WARRANTIES, AND COVENANTS.**

The Participating Lender represents, warrants, and covenants that:

(a) The Participating Lender and all of its staff who might originate loans under this Agreement have read and understand the Guide.



(b) The Participating Lender is, and shall continue to be, a corporation, partnership, limited liability company, or other business entity duly organized and validly existing and in good standing under the laws of the jurisdiction under which it was organized, and has the power and authority, corporate and other, to own its properties and carry on its business as now being conducted and is duly qualified to do such business in the State of New Jersey and wherever such qualification is required.

(c) The Participating Lender is not subject to any action, suit, proceeding inquiry or investigation pending or threatened, which, either in one incident or in the aggregate, would be likely to result in any material or adverse change in the business, operations, financial condition, properties, or assets of the Participating Lender, or in any material liability on the part of the Participating Lender, or which would draw into question the validity of this Agreement or the Mortgage Loan or of any action taken or to be taken in connection with the obligations of the Participating Lender contemplated herein, or which would be likely to impair materially the ability of the Participating Lender to perform under the terms of this Agreement.

(d) The Participating Lender is not under any cease and desist order or other order of a similar nature, temporary or permanent, of any Federal or State authority, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any such order.

(e) The Participating Lender is a bank or trust company, savings bank, national or State banking association, savings and loan association, or credit union or a mortgage banking firm or mortgage banking corporation, has authority to transact business in the State of New Jersey, and maintains an office in the State where members of the public may go to apply for Mortgage Loans.

(f) The Participating Lender is:

(1) An approved Participating Lender of mortgage loans to and for Fannie Mae and/or Freddie Mac; and/or

(2) A "Supervised Lender" as classified by the VA under Section 500(d) of the Servicemen's Readjustment Act: and/or

(3) An FHA-approved mortgagee;

(4) (i) If the Participating Lender is a bank or trust company, savings bank, national banking institution, savings and loan association, or credit union, the Participating Lender must maintain an office in the State of New Jersey and be able to demonstrate to the Agency and any Investor, if applicable, that the Participating Lender is in compliance with Title 12 of the United

States Code or other acts of government that may be promulgated from time to time with respect to any Federal, State or quasi-governmental agency having appropriate jurisdiction over the Participating Lender's ability to originate Mortgage Loans under this Agreement.

(ii) If the Participating Lender is a mortgage banker and is owned by or affiliated with an entity that is a bank or trust company, savings bank, national banking institution, savings and loan association, or credit union, then the Participating Lender must maintain an office in the State and be able to demonstrate to the Agency and any Investor, if applicable, that the Participating Lender's owner or affiliated entity is in compliance with Applicable Laws that may be promulgated from time to time with respect to or by any Federal, State or quasi-governmental agency having appropriate jurisdiction over the Participating Lender's ability to originate Mortgage Loans under this Mortgage Agreement.

(iii) If at any time during the course of participating in the Agency Mortgage Programs, the Participating Lender fails to meet the above criteria, it must so notify the Agency immediately. The Agency and the Investor, if applicable, will be permitted to take any and all appropriate actions that are consistent with the terms of this Agreement. Failure to immediately notify the Agency and the Investor, if applicable, pursuant to this paragraph will be grounds for immediate termination of this Agreement.

(iv) The Agency, with the consent of any Investor or bond insurer, if applicable, in each entity's sole discretion, may waive or modify certain of the above criteria. However, all Participating Lenders must meet and at all times while participating in Mortgage Programs of the Agency, be in compliance with requirements above.

(g) This Agreement is a legal, valid and binding agreement of the Participating Lender, enforceable according to its terms, the making and performance of which have been duly authorized by all necessary corporate and other action and will not constitute a violation of any law, any requirement imposed by any judicial or arbitral body or governmental instrumentality, or the charter or by-laws of the Participating Lender, or a default under any agreement or instrument by which it is bound or affected.

(h) Neither the execution and delivery of this Agreement, the origination and acquisition of the Mortgage Loans by the Participating Lender, the sale of the Mortgage Loans to the Agency or the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement will conflict with or result in a breach of the terms, conditions, or provisions of the Participating Lender's charter or by-laws, or any legal restriction of any agreement or instrument to which the Participating Lender is now a

party or by which it is bound, or constitute a default, or result in an acceleration under any of the foregoing, or result in the violation of any law, regulation, order, judgment, or decree to which the Participating Lender or any of its property is subject, or impair the ability of the Agency to enforce any of the Mortgage Loans according to their terms, or impair the value of any of the Mortgage Loans.

(i) Neither the making nor performance of this Agreement by the Participating Lender requires the consent or approval of any governmental instrumentality or, if such consent or approval is required, it has been obtained in writing by the Participating Lender and submitted to the Agency prior to the execution of this Agreement.

(j) The Participating Lender will not knowingly take any action or permit any action to be taken which would impair the exemption from Federal income taxation on interest on the Agency's Qualified Mortgage Revenue Bonds.

(k) The Participating Lender will comply with all procedures in the Guide relating to the acceptance and reporting of Mortgage Loan applications on a first-come first-served basis.

(l) The Participating Lender will not sell or assign to the Agency any "covered home loan" or "high cost home" loan as defined in the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 or a "high-cost mortgage" as defined under Consumer Financial Protection Bureau (CFPB) regulations.

(m) Neither this Agreement nor any statement, report, or other document furnished or to be furnished by the Participating Lender pursuant to this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein not misleading, and, to the best of Participating Lender's knowledge, no statement, report, or other document furnished by any party other than the Participating Lender in connection with this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statement contained therein not misleading.

(n) The Participating Lender shall comply with all statutes, rules, and regulations applicable to its activities under this Agreement, including without limitation, any rule or regulation of Participating Lender's Federal prudential regulator or, if applicable, the State of New Jersey, Department of Banking and Insurance, or any other regulatory body having jurisdiction over the Participating Lender. At all times, the Participating Lender shall be properly licensed and in compliance with Applicable Laws, registration, and reporting requirements of the State, Federal, or other applicable and relevant authorities governing lending and mortgage related activities, including the CFPB and U.S. Department of Housing and Urban Development (HUD).

(o) The Participating Lender is not subject to federal debarment or suspension for engaging in fraudulent, predatory, or discriminatory lending, or for engaging in redlining activities, and is not under investigation for its lending practices by any State or Federal authority with

jurisdiction over the Participating Lender.

(p) The Participating Lender is a lending institution that has been approved to participate in any of the Agency's Mortgage Programs described in the Guide.

(q) The Participating Lender does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant contained in this Agreement.

(r) The Participating Lender, upon learning that any violation of these provisions has occurred or may occur, shall immediately notify the Agency in writing.

(s) The Participating Lender, by execution of this Agreement and by the submission of any bills or invoices for payment, or acceptance of payment pursuant thereto, certifies and represents that it has not violated any of these provisions.

(t) The Agency and the Participating Lender both agree to comply with all privacy and non-disclosure requirements and restrictions required under The Gramm-Leach-Bliley Act, P.L. 106-102 (GLBA), enacted November 12, 1999. However, the parties acknowledge and agree that any such compliance remains subject to the Open Public Records Act (OPRA), and judicial subpoena.

***The representations, warranties, and covenants contained in this Section 6 shall be true and correct when made, and by accepting payment for each Mortgage Loan on its respective Purchase Date, the Participating Lender shall be deemed to affirm that these representations, warranties, and covenants remain true and correct as of that Purchase Date and continuing thereafter until the parties have no further obligations under this Agreement for that Mortgage Loan's purchase.***

## **7. PARTICIPATING LENDER INTEGRITY, RESPONSIBILITY, AND NONDISCRIMINATION.**

(a) The Participating Lender shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of State or Federal laws, regulations, or other requirements that govern contracting with the Agency.

(b) The Participating Lender shall not discriminate against any Borrower, Co-Signer, or applicant for a Mortgage Loan because of race, color, religious creed, ancestry, handicap, national origin, age, or sex or any other basis protected under the New Jersey Law Against Discrimination.

(c) The Participating Lender shall not engage in any unfair, deceptive, or abusive acts or practices under State and/or Federal consumer protection laws when accepting applications; dealing with Applicants, Borrowers, and/or Co-Signers for Mortgage Loans; and/or in originating the Mortgage Loans.

(d) It is the policy of the Agency not to originate, purchase or accept assignment of any predatory loan, and in particular any “covered home loan” or “high-cost home loan” as defined by the New Jersey Home Ownership Security Act of 2002 (“HOSA”), N.J.S.A. 46:10B-22. Therefore, the Participating Lender has represented in this Purchase Agreement that it will not sell or assign to the Agency any “covered home loan” or “high-cost home loan” as defined by the HOSA or a “high-cost mortgage” as defined under CFPB regulations.

(e) The Participating Lender shall not disclose to others any confidential information gained, from whatever source, by virtue of this Agreement.

(f) The Participating Lender shall not, in connection with this or any other agreement with the State and/or the Agency, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the State and/or the Agency.

(g) Upon request of the Agency; the State of New Jersey, Department of Law and Public Safety; or any other State or Federal governmental entity with regulatory or prosecutorial authority over the Participating Lender and/or the Mortgage Loans, the Participating Lender shall promptly make available for inspection, copying, and auditing, all business and financial records of the Participating Lender of, concerning, and referring to this Agreement, or which are otherwise relevant to the enforcement of these provisions or the Mortgage Loans offered to the Agency hereunder. This right of access will continue for the term of any document retention requirement relating to the Mortgage Loans under Applicable Laws, the term of any document retention requirements of any insurer and/or guarantor of the Mortgage Loans, or six years from the date of this Agreement, **whichever is longer**.

(h) In order to ensure that all persons meet a standard of responsibility which assures the Agency, the State and its citizens that such persons will both compete and perform honestly in their dealings with the Agency and avoid conflicts of interest, all persons are prohibited from engaging in the following activities:

1. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Agency member or employee or to any member of the immediate family, as defined by N.J.S.A. 52:13D–13i, of any such member or employee, or to any partnership, firm, or corporation with which such member, employee or member of their immediate family is employed or associated, or in which such member or employee has an interest within the meaning of N.J.S.A. 52:13D–13g.

2. No person shall, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Agency member or employee having any duties or

responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Agency. No person shall, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to any individual, firm or entity with which such member or employee is employed or associated or has an interest within the meaning of N.J.S.A. 52:13D–13g. Any relationships subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the member or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

3. No person shall influence, or attempt to influence or cause to be influenced, any Agency member or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said member or employee.

4. No person shall cause or influence, or attempt to cause or influence, any Agency member or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the person or any other individual or entity.

(i) All persons shall report to the Attorney General of New Jersey and the State Ethics Commission the solicitation of such persons of any fee, commission, compensation, gift, gratuity or other thing of value by an Agency member or employee.

(j) The prohibited activities in (h)1 through 4 above shall not be construed to prohibit a person from offering or giving gifts to or contracting with an Agency member or employee, nor be construed to prohibit an Agency member or employee from receiving gifts from or contracting with a person, and shall not be grounds for debarment pursuant to N.J.A.C. 5:80–18.2(a)15, provided that such activities are offered or made under the same terms and conditions that are available to members of the general public and are consistent with any rules promulgated by the State Ethics Commission.

(k) For violation of any of the provisions of this Section, the Agency may terminate this and any other Agreement with the Participating Lender, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another entity to complete performance hereunder, and debar and/or seek suspension of the Participating Lender from doing business with the Agency. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Agency may have under this Agreement or under any law, statute, or regulation.

(l) The Participating Lender, upon learning that any violation of these provisions has occurred or may occur, shall immediately notify the Agency in writing.

(m) The Participating Lender, by execution of this Agreement and by the submission of any bills or invoices for payment, or acceptance of payment pursuant thereto, certifies and represents that it has not violated any of these provisions.

***The Participating Lender agrees when executing this Agreement, and by accepting payment for each Mortgage Loan on its respective Purchase Date, that it has and will continue to abide by the requirements of this Section 7 until the parties have no further obligations under this Agreement for that Mortgage Loan's purchase.***

## 8. DISCLOSURES, CERTIFICATIONS AND QUESTIONNAIRES

### (a) Political Campaign Contributions

For the purpose of this Subsection, the following shall be defined as follows:

“Contribution” means a contribution reportable by a recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act” P.L. 1973, c. 83 (C.19:44A-1 et seq.), a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300 during a reporting period are deemed “reportable” under these laws.

“Business Entity” means:

- (1) a for-profit entity as follows:
  - (i) in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of corporation;
  - (ii) in the case of a general partnership: the partnership and any partner;
  - (iii) in the case of a limited partnership: the limited partnership and any partner;
  - (iv) in the case of a professional corporation: the professional corporation and any shareholder or officer;
  - (v) in the case of a limited liability company: the limited liability company and any member;
  - (vi) in the case of a limited liability partnership: the limited liability partnership and any partner;
  - (vii) in the case of a sole proprietorship: the proprietor; and
  - (viii) in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;
- (2) any subsidiary directly or indirectly controlled by the Business Entity;

- (3) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the Business Entity, other than a candidate committee, election fund, or political party committee;
- (4) principals who own or control more than 10 percent of the profits or assets of a Business Entity or 10 percent of the stock in the case of a Business Entity that is a corporation for profit (“Principals”); and
- (5) with respect to an individual who is included within the definition of Business Entity, the individual’s spouse or civil union partner, and any child residing with the individual, provided, however, that, P.L. 2005, c. 51 shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) (“Chapter 51”).

P.L. 2005, c. 51 — means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order No. 117 (Corzine 2008).

The terms, restrictions, requirements and prohibitions set forth in P.L. 2005, c. 51 are incorporated into this Agreement by reference as material terms of this Agreement with the same force and effect as if P.L. 2005, c. 51 were stated herein its entirety. Compliance with P.L. 2005, c. 51 by the Participating Lender shall be a material term of this Agreement.

The Participating Lender hereby certifies to the NJHMFA that commencing on and after October 15, 2004, the Participating Lender (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between the Participating Lender and the NJHMFA pursuant to P.L. 2005, c. 51. The Participating Lender hereby further certifies to the NJHMFA that any and all certifications and disclosures delivered to the NJHMFA by the Participating Lender (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the NJHMFA shall have the right to declare this Agreement to be in default.

The Participating Lender hereby covenants that the Participating Lender (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any Contributions of money, or pledge of a Contribution, including in-kind Contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey



state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Section are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by the Participating Lender (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of P.L. 2005, c. 51, the NJHMFA shall have the right to declare this Agreement to be in default.

In addition to any other default specified in this Agreement, the NJHMFA shall have the right to declare a default under this Agreement if: (i) the Participating Lender (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) the Participating Lender (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) The Participating Lender (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) The Participating Lender (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) The Participating Lender (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by the Participating Lender (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) directly would violate the restrictions of P.L. 2005, c. 51; (vi) the Participating Lender (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) the Participating Lender (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) engages in any exchange of Contributions to circumvent the intent of P.L. 2005, c. 51; (viii) The Participating Lender (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) directly or indirectly through or by any other person or means, does any act which would violate the restrictions of P.L. 2005, c. 51; or (ix) any material misrepresentation exists in any Political Campaign Contribution Certification and Disclosure which was delivered by the Participating Lender to the NJHMFA in connection with this Agreement.

The Parties agree that on                     , 20    , the NJHMFA received confirmation from the New Jersey Department of the Treasury's Chapter 51 Review Unit that the Participating Lender was approved for 2 year Chapter 51/EO117 certification. The Participating Lender hereby acknowledges and agrees that pursuant to P.L.2005, c. 51, the Participating Lender shall have a continuing obligation to report to the Office of the State Treasurer, Political

Campaign Contribution Review Unit of any Contributions it makes during the term of this Agreement. If after the effective date of this Agreement and before the entire purchase price is paid to the NJHMFA, any Contribution is made by the Participating Lender and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of P.L. 2005, c. 51, the NJHMFA shall have the right to declare this Agreement to be in default.

**b. Doing Business with Iran Certification**

The Participating Lender hereby acknowledges that pursuant to L. 2012, c. 25, Section 4 (N.J.S.A. 52:32-58), the Participating Lender shall be required to file a certification with the State of New Jersey that the Participating Lender nor any of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the New Jersey Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran (the form of which is available at <http://www.state.nj.us/treasury/purchase/forms/StandardRFPForms.pdf>), on or before the date of the Starting Date of Program. The certification form must be submitted NJHMFA. Compliance with this certification requirement is a material term and condition of this Agreement and is binding on the Participating Lender.

**c. Political Campaign Contributions Disclosure**

The Participating Lender hereby acknowledges that the Participating Lender has been advised of their responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission ("ELEC") pursuant to N.J.S.A. 19:44A-20.13 (L. 2005, c. 271, section 3) if the Participating Lender enters into agreements or contracts, such as this Agreement, with a public entity, such as the NJHMFA, and receives compensation or fees in excess of \$50,000 or more in the aggregate from public entities, such as the NJHMFA, in a calendar year. It is the Participating Lender's responsibility to determine if filing is necessary. Failure to do so can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

**9. PARTICIPATING LENDER NON-COMPLIANCE THAT MAY LEAD TO FEES**

(a) As set forth in the Guide, the Agency will assess fees on the Participating Lender for the late delivery of complete, properly stacked Mortgage Loan documents.

(1) Servicing Submissions:

Complete and timely loan packages including servicing set-up packages, must be submitted as set forth on the applicable document checklist. Wiring instructions are to be included in the Purchase Package. Failure to meet delivery times may result in temporary suspension from the ILRS and the imposition of additional fees. ***Obtaining the necessary extensions and***

***paying the fees therefor are the sole responsibility of the Participating Lender.***

(2) Other Submission Documents:

The Agency will charge an extension fee for the late delivery of closed loan packages. The Participating Lender will be notified in writing of the applicable extension fees and any late fees that are due as set forth in Guide. Failure to remit fees due may affect a Participating Lender's approval to participate in the Agency's loan origination activities.

(b) Unless otherwise expressly provided, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing under this Agreement shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. No action or inaction by the Agency shall constitute a waiver of any of the Agency's rights with respect to the transactions subject to this Agreement.

## **10. PARTICIPATING LENDER NON-COMPLIANCE THAT MAY LEAD TO REPURCHASE**

### **Mortgage Loan Non-Compliance – Failure or Inability to Cure**

The Agency may issue a Repurchase demand for any non-compliant Mortgage Loan for an amount equal to the then unpaid principal balance of such Mortgage Loan, plus accrued interest and costs incurred by NJHMFA, any service release premium paid, and any originations fees paid to the Participating Lender for the subject Mortgage Loan. If the Agency requires Repurchase on a Mortgage Loan provided to a particular Borrower, that Repurchase demand will also apply to any Agency down payment and closing cost assistance subordinate Mortgage Loans issued to that Borrower. The bases for Repurchase include, but are not limited to:

(a) The Agency reserves the right to have the Participating Lender Repurchase Mortgage Loans that have not been originated in compliance with Applicable Laws, this Agreement, the Guide, and/or applicable Term Sheets, guidelines, rules and regulations, or for which required documentation has not been submitted to the Agency or its agent(s) within the required time frame. Repurchase of loans may be required based on non-compliance with Federal tax-exempt bond requirements, non-compliance with critical underwriting or closing requirements, and CFPB requirements. In addition, failure to provide critical documents including, but not limited to, those required for tax-exempt bond compliance, applicable mortgage insurance, guaranty certificate, and critical documents related to the security of the Mortgage Loan (e.g., Note, Mortgage, Assignment of Mortgage, or title policy) may also require Repurchase. Failure to obtain applicable mortgage insurance or guaranty and/or submit the MIC or guaranty evidencing such insurance or guaranty, and/or

failure to timely notify FHA of the sale of the Mortgage Loan and the accompanying transfer of the accompanying FHA Case Number to the Agency may result in the required Repurchase of the Mortgage Loan by the originating Participating Lender.

(b) If the Participating Lender failed to comply with Applicable Laws as to a particular Mortgage Loan, the Agency will require Repurchase.

(c) The Agency will require Repurchase of any Mortgage Loan for which any Borrower and/or Co-Signer has made, with the knowledge of the Participating Lender, any misrepresentation or misstatement of a material fact in any document related to the Mortgage Loan or any misrepresentation of a material fact by the Participating Lender.

(d) The Agency will require Repurchase of any Mortgage Loan for which the Participating Lender amends, modifies, or incorrectly reproduces Agency documents, or utilizes any document that does not comply with Applicable Law or the requirements of the applicable mortgage insurer/guarantor and the Agency, in its discretion, determines that such incorrect form affects the Mortgage Loan's legality, validity, security, and secondary market salability or compliance with Applicable Laws.

(e) A Repurchase demand will be made for any Mortgage Loan that, within 180 days or less from the Agency's purchase of the Mortgage Loan, becomes two or more months in arrears as to payment of principal and interest or otherwise goes in default, which after any required notice and any cure period, would give the Agency the right to foreclose.

(f) If the Property is not free and clear of liens, encumbrances or claims by third parties, or otherwise lacks good title, and the Participating Lender fails to or cannot cure such deficiency, the Agency will require Repurchase.

(g) If the lien of the Mortgage Loans are not valid first liens as to any purchase money or refinance Mortgage Loan and valid second lien as to any Agency down payment or closing cost subordinate Mortgage Loan, the Agency may require that the Participating Lender Repurchase the Loans if the Participating Lender does not or cannot timely cure such deficiency.

(h) If at the time of closing the improvements on the real property securing the Mortgage Loan are not covered by a valid and subsisting policy of hazard insurance and flood insurance (if applicable) in an amount sufficient to compensate the Agency for a loss equal to the full amount of the unpaid balance of the Mortgage Loan.

(i) If any representation shall prove to be inaccurate when made by the Participating Lender or in the event of any breach of covenant or warranty by the Participating Lender, and/or the Participating Lender fails to deliver all required documents within the required time period established in the Guide, the Agency will require Repurchase of all Mortgage Loans that the Agency determines are affected by that inaccuracy, breach and/or failure.

(j) The Participating Lender fails to submit a complete Mortgage Loan file to the Agency, or if any material defect or inaccuracy cannot be cured to the satisfaction of the Agency within the sixty (60) day period, or such shorter period set forth in the Guide with respect to a particular defect or inaccuracy.

(k) Ginnie Mae or any Investor requires the Agency to repurchase a Mortgage Loan.

(l) Calculation of Amounts Due Through Repurchase Price and Procedure:

(i) The Participating Lender will Repurchase any Mortgage Loan within five business days of demand, in an amount equal to the unpaid principal balance of the Mortgage Loan multiplied by the discount percentage paid by the Agency with an adjustment for accrued interest at the time of Repurchase, plus the aggregate amount of any advances and interest thereon, plus an amount equal to any attorney's fees, legal expenses, court costs or other expenses, including the origination fee paid by the Agency as part of the purchase price, incurred by the Agency in connection with such Mortgage Loan and the Repurchase thereof. Where applicable the Repurchase Price shall include all amounts due on any related Agency issued down payment assistance/closing cost subordinate Mortgage Loan.

(ii) The Repurchase price of the Mortgage Loan shall be remitted by the Participating Lender to the Agency, and the Agency shall assign and deliver the related Mortgage Documents to the Participating Lender, and execute and deliver such instruments of transfer or assignment, in each case without recourse, as shall be necessary to vest in Participating Lender such Mortgage Loan. **The Participating Lender hereby waives any statute of limitation or other Law that might otherwise be raised in defense to any Repurchase obligation hereunder.**

(iii) Any and all such service transfers which occur as a result of a Repurchase Demand are subject to all applicable Transfer of Servicing/Servicer Transfer rules and regulations.

(m) If the Participating Lender has been required to Repurchase a Mortgage Loan pursuant to this Section 9, the Participating Lender may reoffer that Mortgage Loan for sale to the Agency if all deficiencies causing the Repurchase have been cured, with the exception of any Mortgage Loan under which an Early Payment Default or significant delinquency has occurred.

(n) Unless otherwise expressly provided, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing under this Agreement shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as

often as may be deemed expedient. No action or inaction by the Agency shall constitute a waiver of any of the Agency's rights with respect to the transactions subject to this Agreement.

**11. PARTICIPATING LENDER NON-COMPLIANCE THAT CAN RESULT IN TERMINATION OF THIS AGREEMENT**

(a) The Agency has the right to terminate immediately upon electronic mail delivery of a written notice, the Participating Lender's authority to participate as an Agency Participating Lender upon the happening of any of the following:

(1) The Participating Lender violates any provision of Applicable Laws, this Agreement, the Guide, applicable Term Sheets and/or guidelines;

(2) Any representation, covenant or warranty in this Agreement made by the Participating Lender to the Agency fails to be true and accurate in all material respects;

(3) The Participating Lender fails to comply in all respects with its obligation to meet and maintain the financial requirements required by the Agency;

(4) Failure of the Participating Lender to duly observe or perform in any material respect any covenant, condition, or agreement under Applicable Laws or in this Agreement, the Guide, or any relevant Term Sheet or program guidelines.

(5) Failure of the Participating Lender to repurchase a Mortgage Loan or to correct defects or deficiencies with respect to Mortgage Loans in accordance with this Agreement, the Guide, or any relevant Term Sheet or program guidelines.

(6) Appointment of a conservator, receiver, or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities, or similar proceeding of a court, agency, or supervisory authority having jurisdiction over the Participating Lender, affecting the Participating Lender or substantially all of its assets, or for the winding-up or liquidation of its affairs.

(7) Consent by the Participating Lender to the appointment of a conservator, receiver, or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities, or similar proceeding affecting the Participating Lender or substantially all of its assets.

(8) Admission in writing by the Participating Lender of its inability to pay debts generally as they mature, or the filing of a petition to take advantage of any applicable bankruptcy or insolvency statute, or the making of an assignment for the benefit of creditors.

(9) The Participating Lender is required to file a capital plan pursuant to the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time;

(10) The filing of an involuntary petition in bankruptcy against the Participating Lender;

(11) The Agency receives notice of a planned sale or transfer of a majority ownership interest, merger, consolidation or change in legal structure of the Participating Lender, unless the Agency approves in writing the change;

(12) The Participating Lender is not authorized to originate or sell Mortgage Loans.

(13) The Participating Lender's Federal prudential regulator, the New Jersey Department of Banking and Insurance or any body thereof, HUD and/or the CFPB issue adverse findings and/or penalties against the Participating Lender or the Participating Lender enters into a settlement with such body to resolve pending investigation or proceeding, even if the Participating Lender does not admit fault or liability;

(14) The Participating Lender is suspended or debarred from doing business with the Agency, the State or the Federal Government;

(15) The Participating Lender is not or has lost its qualification or endorsement to issue Fannie Mae, Freddie Mac, Ginnie Mae, FHA, VA, and/or USDA products;

(16) The Agency's quality control review routinely results in findings that the Participating Lender must correct;

(17) The Participating Lender is required to Repurchase more than six (6) Mortgage Loans within the term of this Agreement; and/or

(18) Agency Staff determine that the Participating Lender has a significantly high fallout ratio that disrupts the Agency's ability to offer competitive pricing.

(b) If any of the events specified in subsection (a) occur, the Participating Lender will give written notice thereof to the Agency's Consumer Lender Coordinator within 48 hours after the happening of such event. Upon such notice pursuant to this Section, effective immediately, the rights of the Participating Lender and its rights to compensation hereunder shall terminate.

(c) In the event of a termination pursuant to this Section, all Mortgage Loan files and all funds on deposit in connection with the Mortgage Loans shall be immediately transferred

to the Agency or to such party as directed by the Agency, and a final accounting shall be made as to all funds received by the Participating Lender. Should the Participating Lender fail to immediately transfer the files or funds, the Agency may obtain access to the Participating Lender's premises or wherever the files or funds are located in order to take physical possession of same. All costs and expenses incurred by the Agency pursuant to this Section shall be paid or reimbursed by the Participating Lender, or setoff by the Agency against any funds otherwise due to the Participating Lender pursuant to this Agreement.

(d) If the Agency determines that the Participating Lender has failed to perform under any provision of this Agreement or the Guide, then the Agency, its authorized designee, Investor, Trustee, or document custodian, as the case may be, shall be reimbursed by the Participating Lender, on demand, for reasonable attorneys' fees and other out-of-pocket costs and expenses, including all costs of litigation, if necessary, to enforce the Agency's rights.

(e) The Agency, its authorized designee, document custodian or any Trustee and/or Investor, will not be liable in any respect for the termination of the Participating Lender pursuant to this Section.

(f) The Agency may also terminate the Participating Lender's authority to participate as an Agency Participating Lender, with or without cause, upon thirty days written notice to the Participating Lender.

(g) If the Participating Lender fails to follow the procedures set forth in this Agreement and in the Guide in any material respect, the Agency may at any time terminate this Agreement without refunding to the Participating Lender any portion of the Commitment Fee. In such event, the Participating Lender shall promptly deliver to the Agency the loan file for each applicant for a Mortgage Loan, as well as the reservation fees, if any, paid by each applicant.

(h) Unless otherwise expressly provided, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing under this Agreement shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. No action or inaction by the Agency shall constitute a waiver of any of the Agency's rights with respect to the transactions subject to this Agreement.

## **12. ADDITIONAL AGENCY REMEDIES.**

In addition to the remedies set forth above with respect to particular instances of Participating Lender non-compliance, the Agency reserves the right to seek the following



remedies as the Agency deems appropriate under the circumstances.

(a) The Participating Lender shall be liable to the Agency for any damages, including, without limitation, costs and attorney's fees, suffered by the Agency by reason of the inaccuracy of any representation made or the breach of any covenant or warranty made by the Participating Lender in connection with the transactions contemplated under this Agreement.

(b) The Participating Lender agrees to indemnify and hold the Agency and any of its designees, trustees, and/or Investors harmless from any and all claims, demands, losses, costs, curtailments, penalties, damages, and expenses (including reasonable attorney's or accounting fees) that they may incur with respect to the origination of Mortgage Loans by the Participating Lender pursuant to this Agreement, including, but not limited to, the Participating Lender's noncompliance with Applicable Laws, this Agreement, the Guide, or any applicable Term Sheet or program guidelines; defective Mortgage Loan submissions; delivery of files, recording and/or delivery of Mortgage Documents; transfer of all escrows or other funds due and owing the Agency; or noncompliance with any Laws, regulations or directives pertaining to the origination of Mortgage Loans, consumer protection, discriminatory practices, or criminal activity.

(c) Seek that the Participating Lender be suspended from contracting with the Agency.

(d) Debar the Participating Lender from contracting with the Agency.

(e) Unless otherwise expressly provided, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing under this Agreement shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. No action or inaction by the Agency shall constitute a waiver of any of the Agency's rights with respect to the transactions subject to this Agreement.

### **13. MISCELLANEOUS.**

(a) The Agency and any other State entity with regulatory and/or prosecutorial authority over the Agency, the Participating Lender, and/or the Mortgage Loans shall have the right, at any time and from time to time, during normal business hours, to examine and audit any and all of the Seller's records or accounts pertaining to any Mortgage Loan sold to the Agency under this Agreement.

(b) To the extent permitted by Law, the Participating Lender agrees that it will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged and

delivered, such supplements hereto and such further instruments as may reasonably be required to appropriate to further express the intention, or to facilitate the performance of this Agreement. The Agency shall have the right to require the Participating Lender to furnish such documents as the Agency, in its sole discretion and from time to time, deems necessary in order to determine that the provisions of this Agreement have been complied with.

(c) All agreements, representations and warranties contained herein or made in writing by or on behalf of the Participating Lender in connection with the transaction contemplated hereby shall survive the execution and delivery of this Agreement, the sale or delivery of this Agreement, the sale or delivery of the Mortgage Loans and payment thereof, any disposition thereof by the Agency, and any investigation at any time made by the Agency or on behalf of the Agency.

(d) Invalidity of any one of the provisions of this Agreement, by judgment or court order, shall in no way affect any other provisions herein contained, which provisions shall remain in full force and effect.

(e) This Agreement is governed by the laws of the State of New Jersey.

(f) The Participating Lender hereby consents to the jurisdiction of the Superior Court of the State of New Jersey, Mercer Vicinage for any proceedings in connection with this Agreement or the Participation Application.

(g) This Agreement shall not be assignable by the Participating Lender without the written consent of the Agency, and in the event of any attempted assignment thereof without such written consent, the Agency may, at its option, terminate this Agreement as to its obligation to make any further purchase of Mortgage Loans from the Participating Lender.

(h) The Participating Lender agrees that, so long as it shall continue to serve in the capacity contemplated under the terms of this Agreement, it will remain in good standing under the laws governing its creation and existence and remain qualified under the laws of the State of New Jersey to do business in the State, will not dissolve or otherwise dispose of all or substantially all of its assets and will not voluntarily consolidate with or merge into any other entity, or permit one or more entities to consolidate with or merge into it; provided, however, that the Participating Lender may, without violating the covenant contained in this subsection, consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer to another such entity all or substantially all of its assets as an entirety and thereafter dissolve, if the surviving, resulting or transferee entity, as the case may be, shall have a positive net worth, shall be qualified under the laws of the State of New Jersey to do business in the State, shall be qualified under the laws and have all necessary approvals required of the Participating Lender under this Agreement to perform Seller's duties under this Agreement, and shall assume in writing all of the obligations of the Participating Lender under this Agreement, in which event the Agency shall release the Participating Lender in writing, concurrently with and contingent upon such assumption, from all obligations so assumed.

(i) The Participating Lender agrees that at least sixty (60) days prior to any major change in its corporate existence or the ownership of its stock or assets (including but not limited to dissolution, disposal of all or substantially all of the assets of another entity, consolidation with or merger into any other entity, or permitting another entity to consolidate with or merge into it) it will give written notice to the Agency described in detail the nature of the changes being proposed and the impact such changes might have on its ability to serve in the capacity contemplated under this Agreement. Upon receipt of said notice, the Agency will evaluate whether to allow Seller's continued participation in the Program, and if allowed, upon what terms, limitations, and conditions.

(j) The Participating Lender shall obtain and maintain at its own expense and shall furnish to the Agency satisfactory evidence of (i) a blanket fidelity bond, and (ii) an errors and omissions insurance policy, in full force and effect throughout the term of this agreement, covering the Seller's Officers and employees and other persons acting on behalf of the Participating Lender in its capacity as the Participating Lender with regard to the Mortgage Loans. The amount of coverage shall at least be equal to the coverage that would be required by Fannie Mae or Freddie Mac with respect to the Participating Lender if the Participating Lender were servicing loans for Fannie Mae or Freddie Mac. In the event that the Participating Lender is unable to secure the aforesaid amount of coverage, the coverage shall be in an amount as required by the Agency in its sole discretion. The insurance company selected by the Participating Lender shall be acceptable to the Agency. The certificate of insurance must list the agency as a certificate holder and provide the Agency at least thirty (30) days notice cancellation. Any amounts collected under such bond policy relating to Seller's activities under this Agreement shall be remitted to the Agency.

(k) This Agreement and all obligations and rights arising hereunder shall bind and inure to the benefit of the Agency and the Participating Lender and their respective successors in interest and permitted assigns.

(l) This Agreement may only be amended, changed, or altered by an instrument in writing executed by the Agency, which specifically refers to this Agreement, and which is executed by the Participating Lender, if adversely affected by such amendment, change, modification or alteration.

(m) Notices, certificates or other communications hereunder shall be in writing and deemed given when delivered or five (5) days after mailing by regular, certified, or registered mail, postage prepaid, return receipt requested, addressed to the appropriate Notice Address. The parties may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates, and other communications shall be sent. Certain programmatic notices may be delivered electronically as provide in the Participating Lender's Guide or any relevant program Term Sheet or guidelines.

(n) The Participating Lender's Guide and any relevant Term Sheets or guidelines that now exist or are hereafter developed, are incorporated herein for all purposes. Such incorporation specifically includes references to any applicable guidelines and program

manuals related to FHA, Fannie Mae, Freddie Mac, USDA, VA, any relevant mortgage insurers, and where applicable, secondary market investors/guarantors (i.e. Ginnie Mae), and to all applicable regulatory bodies having jurisdiction over the Participating Lender's mortgage lending activities.

(o) All forms and reports required by this Agreement will be prescribed by the Agency from time to time and may be amended, supplemented, or replaced as the Agency shall deem appropriate.

(p) Notwithstanding anything herein to the contrary, no recourse shall be had for any claim based upon any obligation or covenant in this Agreement against the Agency, or against any past, present or future member, officer, director, or employee for the Agency or successor entity, either directly or indirectly, under any rule of law or equity, statute or constitution. No provision hereof shall be construed to impose a charge against the general credit of the Agency or any personal or pecuniary liability upon the Agency.

(q) The Participating Lender agrees, acknowledges and recognizes that it is under a strict duty of confidentiality with regard to its operation and its borrower's records, specifically any CBI. The Participating Lender agrees not to sell, transfer, or share with any third parties any confidential borrower information received during the ordinary course of conducting business unless the prior written consent of the agency is obtained. Notice shall first be given to the Agency specifying exactly what information is to be shared, with whom it will be shared, and the reason the permission to disclose is being requested. Any CBI received by the Participating Lender from the Agency may be used only as is necessary to complete the stated purpose of this Agreement. Notwithstanding anything in this Agreement to the contrary, the rights and responsibilities regarding CBI as herein stated shall survive indefinitely the termination of this Agreement. As a condition of doing business, the Agency has agreed to reciprocate the conditions and notice requirements of this subsection with respect to the Participating Lender.

(r) Notwithstanding anything in this Agreement to the contrary, the Participating Lender agrees to fully disclose any breach in security that materially affect the Agency. All security breaches with the potential to affect CBI are deemed material for the purposes of this Section. The Participating Lender also agrees to report the date, time and manner of any such security breach, the effect of the breach on the Agency and the Borrower, and any specific corrective action that the Participating Lender has taken or will take in response to that security breach in a reasonable timely manner.

(s) This Agreement shall be effective as of the date the Participating Lender is authorized by the Agency to proceed under the terms of this Agreement, and shall apply to all Mortgage Loans originated by the Participating Lender on behalf of the Agency, regardless of when the Mortgage Loans were originated.

(t) This Agreement may be executed in one or more counterparts, each of which shall be an original but such counterparts shall together constitute but one and the same Agreement.

(u) This Agreement will continue in effect until the end of the current calendar year unless terminated sooner under the terms of this Agreement or extended by written notice from the Agency. The Agreement may be renewed at the end of the current calendar year upon execution of a new Mortgage Purchase Agreement Renewal and payment to the Agency of Participation Fee, if any is so required. If this Agreement is not renewed, both parties agree to continue processing all current applications for mortgages and mortgage loans in accordance with the terms of this Agreement provided such applications have been reserved with the Agency before year end under the process set forth in the Guide.

***By signing below and submitting and accepting payment from the Agency for the purchase of any and all Mortgage Loans hereunder, the Participating Lender hereby affirms, and continuously affirms, that the signer of this Agreement and all of Participating Lender's staff who will originate Mortgage Loans have read and understand the Guide and are committed to a high level of integrity, non-discrimination, non-predatory lending, and compliance in conducting its business with applicants for and Borrowers and Co-Signers of the Agency's Mortgage Loans.***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date hereof.

\_\_\_\_\_  
(Participating Lender)

New Jersey Housing and Mortgage Finance Agency

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

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

Executive Director

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

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

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