

 **UTAH HOUSING  
FINANCE AGENCY**

**SINGLE FAMILY MORTGAGE PROGRAM**

**PARTICIPATION  
AGREEMENT**

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**November 1, 2000**

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**PARTICIPATION AGREEMENT**

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**UTAH HOUSING FINANCE AGENCY  
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**PARTICIPATION AGREEMENT**

**RECITALS AND SIGNATURES**

THIS PARTICIPATION AGREEMENT (“AGREEMENT”) is made and entered into as of \_\_\_\_\_, \_\_\_\_\_, between Utah Housing Finance Agency (the “Agency “ or “UHFA”) and \_\_\_\_\_ (as “Lender”) and \*\* \_\_\_\_\_ (as “Servicer”).

\*\* (Enter “N/A” if Lender has sold all Mortgage Loan servicing to UHFA, and sells all current Mortgage Loan production Servicing Released to UHFA)

Lender and Servicer, collectively, may be referred to herein as “Lender”.

WHEREAS, from time to time the Agency will sell Bonds to provide funds under its Single Family Program (the “Program”) for the purchase of Eligible Mortgage Loans from Eligible Lenders;

WHEREAS, Lender desires to originate and sell Eligible Mortgage Loans to the Agency; and

WHEREAS Lender will provide for Servicing of the Mortgage Loans in the following manner(s):

- Mortgage Loans will be sold Servicing Released to UHFA...
- Lender will Service the Mortgage Loans.....
- An Affiliate of Lender will Service the Mortgage Loans.....

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Agency, Lender and Servicer agree to enter into this Agreement and to fully cooperate with one another to implement, fulfill and monitor the Selling Obligations and the Servicing Obligations described herein.

Utah Housing Finance Agency

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

Its: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

\_\_\_\_\_  
(Servicer)

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

Its: \_\_\_\_\_

## **PART I**

### **CONTENT OF CONTRACT, NOTICES, AMENDMENTS, AND INTERPRETATION, AND DEFINITIONS**

#### **1.01 Contractual Basis of Relationship Between Agency and Lender**

Each Mortgage Loan purchase transaction between the Lender and the Agency and the servicing of such Mortgage Loan is on a contractual basis and the contract consists of the following “Participation Documents” as they may be amended:

- This Participation Agreement;
- Mortgage Purchase Agreement;
- Notice of Availability of Funds;
- Selling Supplement;
- Servicing Supplement;
- Accounting and Reporting Supplement; and
- All other documents incorporated into this Agreement.

All phrases that refer to a Participation Document, such as but not limited to “herein”, “hereunder”, this “Agreement”, the “Servicing Supplement”, the “Selling Supplement”, the “Accounting Supplement”, the “Mortgage Purchase Agreement” and so forth are made for the purpose of brevity and sometimes for specific or general reference purposes, but such references in all cases incorporate each Participation Document.

#### **1.02 Amendments**

Amendments and additions to the Participation Documents may be made from time to time by the Agency and shall be distributed to the Lenders by US mail. All such amendments and additions shall take effect 10 days after notice to the Lender. A Notice of Availability of Funds is not an amendment or addition to other Notices of Availability of Funds previously issued by the Agency, but is an announcement of the availability of Mortgage Loan acquisition funds and of new Income Limits, Acquisition Cost Limits and Appraised Value Limits as well as the Mortgage Note rates that must be used for Mortgage Loans originated for sale to the Agency under the applicable series of the Agency’s Bonds. Lender shall take care to keep all Participation Documents current by inserting all replacement pages distributed by the Agency, and shall ensure that each of its employees or agents acting on its behalf with respect to Mortgage Loans has a copy of the most current edition of the Participation Documents as amended. This Agreement is deemed to be an amendment to editions of the Supplements and Guides dated before the date of this Agreement and supersedes all such editions.

#### **1.03 Notices**

Any notice or other communication to be given under the Participation Documents may be given by delivering the same in writing by hand or by mailing first class with the United States Postal Service, or by facsimile transmission promptly confirmed by mailing first class with the United

States Postal Service, addressed as follows or to such other address or fax number as is provided in a written notice in accordance with the applicable Participation Document.

If to the Agency:

Utah Housing Finance Agency  
554 South 300 East  
Salt Lake City, UT 84111  
Fax: (801) 359-1701

If to the Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

If to the Servicer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

**1.04 Interpretation**

The staff of the Agency is available for guidance; however any interpretation or waiver of any provision of this Agreement shall not be binding upon the Agency unless such interpretation or waiver was made or granted in writing and signed by an Officer of the Agency.

**1.05 Definitions**

As used in this Agreement, unless a capitalized term is defined herein or has its meaning set forth in Exhibit A, its meaning will be that indicated by the context.

## PART II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

#### 2.01 Eligible Lender

Lender represents, warrants and covenants that it is, and during the time that it originates Mortgage Loans for sale to the Agency it shall remain, an Eligible Lender as defined and described in this section. An Eligible Lender shall at all times possess the following characteristics and meet the following requirements:

- A. Be a commercial bank, trust company, savings and loan association, mortgage bank, credit union or other similar financial institution having as one of its principal purposes the making of mortgage loans in its usual and regular course of business;
- B. Be authorized to transact mortgage lending business in the State;
- C. Maintain one or more mortgage loan origination offices in Utah, open to the public, fully staffed with experienced personnel who make purchase money mortgage loans for owner-occupied single-family residences located in Utah;
- D. Be authorized at all times during the term of the Agreement by Federal and State law and regulations to make and sell the Mortgage Loans that it has agreed to sell to the Agency;
- E. Be approved by Fannie Mae or Freddie Mac as an eligible lender and, if servicing Mortgage Loans for the Agency, be approved by Fannie Mae or Freddie Mac as an eligible servicer;
- F. Be an FHA approved mortgagee and possess the FHA designation of "Direct Endorsement Lender;"
- G. Have and maintain a blanket fidelity bond or a direct surety bond and, if servicing Mortgage Loans for the Agency, have and maintain an errors and omissions insurance policy as required in Part IV herein (such insurance may be provided under any blanket policy it carries which meets the requirements of Part IV herein);
- H. As shown in its most recent quarterly financial statement, (or if its financial condition is reflected on a consolidated basis with that of a parent company or companies, then as reflected in its parent company's most recent quarterly consolidated financial statement):
  - 1. Be in compliance with any capital requirement imposed by a State or Federal regulatory authority with supervisory authority over it or its parent company or companies, and
  - 2. Maintain a net worth in an amount not less than the amount required to remain a Fannie Mae or Freddie Mac eligible lender and servicer (if servicing Mortgage Loans for the Agency);

- I. Have and maintain an adequate and reliable warehouse line of credit or other mortgage loan funding source in an amount sufficient to enable Lender to disburse Mortgage Loan proceeds at the time of Closing for all Commitments which it shall have or which it shall request from the Agency;
- J. Have during a recent 12-month period, which period shall be designated by the Agency, made and sold to an institutional mortgage investor (which may include the Agency) not less than 25 purchase money mortgage loans for owner-occupied single-family residences located in the State;
- K. Underwrite and ship Mortgage Loans delivered for sale to the Agency;
- L. Deliver to the Agency not less than six Eligible Mortgage Loans for sale to the Agency in any consecutive 12 month period; and
- M. Perform a post-closing review of those items required in an FHA quality control plan, for not less than 10% of the Mortgage Loans delivered for sale to the Agency each calendar year; provided, however, newly qualified Eligible Lenders shall perform a post-closing review of the first five Mortgage Loans delivered for sale to the Agency. (See also Part IV of the Selling Supplement regarding the additional review required of third party originations)

## **2.02 Eligible Servicer**

Servicer represents, warrants and covenants that it is, and during the time that it Services Mortgage Loans for the Agency it shall remain, an Eligible Servicer as defined and described in this section. An Eligible Servicer must at all times possess the following characteristics:

- A. Be an Eligible Lender as defined and described in Part II herein or be and remain an Affiliate of an Eligible Lender;
- B. Service not less than an aggregate of 100 mortgage loans secured by single-family, owner-occupied Residences for Fannie Mae, Freddie Mac, the Agency or another institutional mortgage investor that is not an Affiliate of the Servicer; (the Agency may waive such 100 loan requirement if the Lender sells Mortgage Loans to the Agency Servicing Released);
- C. Is and shall continue to be eligible to service Federally Insured, and Federally Guaranteed mortgages, under applicable rules, regulations and administrative publications issued by the FHA or VA;
- D. Have and maintain authorization by Federal and State law and regulations thereunder to service Mortgage Loans for the Agency;
- E. Have and maintain a blanket fidelity bond or a direct surety bond and an errors and omissions insurance policy as required in Part IV, herein (such insurance may be provided under any blanket policy it carries which meets the requirements of Part IV, herein);

- F. Have and continue to maintain adequately equipped mortgage servicing facilities, and properly trained personnel at all times adequate for the collection of the revenues and escrow payments and the performance of Servicer's duties hereunder. Servicer shall keep all Mortgage Loan files and related documents and records held pursuant hereto with the same care exercised by private institutional mortgage investors for their own investments. Servicer shall bear the entire cost of restoration of such Mortgage Loan files and related documents and records damaged or lost by any cause; and
- G. Achieve and maintain acceptable levels of performance in the reasonable opinion of the Agency by performing its obligations, duties and responsibilities following the procedures set forth herein and in the Supplements.

### **2.03 Lender's General Warranties and Covenants**

- A. The Lender covenants that it is an Eligible Lender as provided for in the Participation Documents.
- B. The Lender covenants that it and its officers and employees acting on its behalf have full legal authority to engage in the transactions covered by the Mortgage Purchase Agreement, and that such participation does not violate the charter or by-laws of the Lender or any agreement, rules, or regulations to which it is subject; that agreements, assignments and other documents executed on behalf of Lender are binding obligations of Lender; and the Lender shall not be a party to or be bound by any agreement, instrument or other restriction, law or regulation which now or in the near future may adversely affect the ability of the Lender to perform its obligations under the Mortgage Purchase Agreement.
- C. The Lender covenants that at all times during the term of the Mortgage Purchase Agreement it shall be authorized by federal and State law and regulations thereunder to make and sell the Mortgage Loans it has agreed to sell to the Agency.
- D. The Lender covenants to give all notices required to be given by any rule or regulation, administrative publication, contract, or rider thereto with respect to Mortgage Loans delivered to the Agency, and shall provide such reports and information as the Agency shall reasonably request.
- E. The Lender covenants and warrants with respect to each copy of a document delivered to or submitted for inspection by the Agency that the same is a true, correct, and complete copy of the original thereof.
- F. The Lender covenants that it will obtain as much information as is reasonably possible and notify the Agency if it should become aware of (1) any additional cash transactions taking place to circumvent the Agency's Acquisition Cost Limits, (2) any inaccuracy in gift letters or sources of Borrower's down payment, closing costs or other cash contributions to a Mortgage Loan transaction, (3) misrepresentations of Borrower's income, (4) Borrower's failure to occupy the mortgaged premises as his Principal

Residence, (5) the Borrower using more than 15% of the area of the mortgaged premises primarily in a trade or business, or as investment property or as a recreational home or (6) the Borrower renting any part of the mortgaged premises.

- G. The Lender shall, at the Agency's option, purchase a Mortgage Loan from the Agency where: (1) Agency determines that such Mortgage Loan is not an Eligible Mortgage Loan; or (2) Lender has failed to pay premiums for hazard insurance, flood insurance, FHA insurance and PMI; or where Lender has failed to pay taxes or other governmental assessments or charge as required, or where lender has failed to perform other obligations required by the Participation Documents.
- H. The Lender shall indemnify the Agency and hold it harmless from any loss, damage or expense that the Agency may sustain as a result of any failure on the part of Lender to properly perform its services, duties and obligations under the terms of the Participation Documents.

#### **2.04 Lender's Representations and Warranties for Mortgage Loans**

The Lender hereby represents, warrants, covenants and agrees that with respect to each Mortgage Loan, each of the following statements will be true and correct at the time of delivery of the Mortgage Loan to the Agency, and at the time of purchase of the Mortgage Loan by the Agency. (At the time of the delivery of each Mortgage Loan to the Agency, the Agency at its sole discretion, may require the Lender to deliver a certificate to the Agency wherein the Lender shall certify that each of its representations and warranties herein is true and correct at the time of delivery and that the Lender is in full compliance with its covenants and agreements made and entered into herein.)

- A... Each Mortgage Loan submitted to the Agency is an Eligible Mortgage Loan and is in compliance with all terms and conditions of the Participation Documents.
- B... The Mortgage Loan is an interest bearing obligation secured by a Mortgage, the assignment of which to the Agency will convey a first lien on mortgaged property, including land and improvements thereon located in the State, constituting a single family Residence identified and described in the Mortgage securing the Mortgage Loan, and will constitute a valid and enforceable first lien on said land and improvements in favor of the Agency, and said first lien will be free and clear of all other liens and encumbrances and will be subject only to real property taxes and assessments not yet due, and permitted liens and encumbrances as set forth in the Participation Documents.
- C... The Residence with respect to which the Mortgage Loan is made is covered by a valid and subsisting Standard Hazard Insurance Policy with an endorsement by the insurer in favor of the Lender or Servicer and its successors and assigns, issued by a company lawfully doing business in the State, providing as a minimum, insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance

percentage stipulated in the policy and not less than eighty percent (80%) (100% for Condominiums Units or attached PUD Units) of the insurable value, based upon replacement cost or the outstanding principal balance of the Mortgage Loan, whichever is greater, which insurance and the carrier of the insurance comply with all requirements of the Participation Documents.

- D. .. The Mortgage Loan is (1) insured by the FHA or guaranteed by the VA, or (2) insured by a Qualified Insurer under a Private Mortgage Insurance Policy, in an amount and manner set forth in the Mortgage Purchase Agreement, and has been approved for coverage by the issuer of the Mortgage Pool Insurance Policy; such insurance or guarantee complies with all requirements in the Participation Documents; such insurance or guarantee is in full force and effect and will inure to the benefit of the Agency as mortgagee.
- E. .. The proceeds of the Mortgage Loan are being devoted to providing a Residence for Low and Moderate Income Persons, within the Income Limits established by the Agency; and no cash proceeds of the Mortgage Loan shall be disbursed to the Borrower or any other person for the benefit of the Borrower, including amounts representing value of any land owned by the Borrower prior to Closing, except for the reimbursement of excess cash deposits or cash down payment paid by the Borrower prior to Closing.
- F. .. The Mortgage Loan is payable as specified by the Agency in the Mortgage Purchase Agreement and all documents incorporated therein.
- G. .. In the Lender's judgment, the Mortgage Loan is in all respects a prudent investment at the purchase price paid by the Agency; except for the below market mortgage note rate, the Mortgage Loan is of sufficient quality that Lender would be willing to own the Mortgage Loan.
- H. .. The interest rate on the Mortgage Loan does not exceed the rate specified by the Agency in the Mortgage Purchase Agreement, and shall be payable in monthly installments on the principal amount of the Mortgage Loan outstanding on the due date of each installment, and the sum of the principal and interest payments due each month shall be due on the first day of each month.
- I. ... Total settlement costs and financing costs paid by the Borrower and seller of the Residence are accurately reflected on the Settlement Statement (HUD-1) signed by the Borrower and seller of the Residence in connection with the Closing.
- J. ... The Current Annual Household Income of the Borrower does not exceed the Income Limit for the Borrower's Household size and area in which the Residence being financed by the Mortgage Loan is located as established and amended by the Agency from time to time in order to comply with Section 143(f) of the Code.
- K. .. The Acquisition Cost of the Residence with respect to which the Mortgage Loan is made does not exceed 90% (110% in Targeted Areas) of the Average Area Purchase Price

applicable to such Residence within the meaning of Section 143(e) of the Code, and does not exceed the Acquisition Cost Limit authorized by the Agency.

- L. .. The Appraised Value of the mortgaged premises does not exceed the Appraised Value Limit established by the Agency with respect to the Mortgage Loan.
- M. . The mortgaged premises constitutes a single-family Residence occupied by the owner thereof as his principal Residence with title held by such owner in fee simple, and is not subject to any leasehold interests or life estates.
- N... The Borrower had the legal capacity to execute the Mortgage and all documents relating thereto, and the Mortgage Loan and the Mortgage are valid and binding legal obligations of the Borrower, enforceable in accordance with their terms.
- O... The Borrower has not had a present ownership interest in any principal Residence at any time during the preceding three year period ending on the date the related Mortgage Loan delivered to the Agency was executed; provided, however, that the foregoing statement set forth shall not apply if the Residence subject to the Mortgage Loan is located in a Targeted Area or, subject to the Agency's sole discretion and prior approval, the Mortgage Loan is not subject to the three year prior ownership restriction under Section 143 of the Code.
- P. .. The Borrower does not own any other properties purchased under any Agency program which will be retained for any purpose.
- Q... The Mortgage Loan is the subject of a title insurance policy which complies with all requirements of the Participation Documents.
- R. .. The Mortgage Loan is in compliance with credit underwriting and property appraisal requirements of the Participation Documents.
- S. .. No payment required by the Mortgage is delinquent, no event of default under the Mortgage which has occurred is continuing, and no event has occurred which would, by the passage of time or giving of notice thereof, constitute an event of default under the Mortgage.
- T. .. The improvements to the mortgaged premises are fully completed [except as contemplated by the Rehabilitation to be completed under a Mortgage Loan insured by FHA under its 203(k) program]. All such improvements are [or shall be in the case of Mortgage Loans insured under Section 203(k)] completed as represented in the appraisal report, comply with all building and zoning codes, restrictions, regulations and other codes and regulations of the city, town or county in which the mortgaged premises is located, and are located entirely upon the real property constituting the mortgaged premises.
- U... Without limiting the generality of the foregoing, the mortgaged premises have culinary water and sewage disposal facilities which (1) are connected to completed functioning

city, town, or county governmental ("municipal") culinary water system or a stock water company culinary water system and a municipal sewage disposal system; or (2) if not connected to a municipal or stock water company water system and/or municipal sewer system, include a functioning well and/or septic tank, and/or related or similar systems which are wholly dedicated to the use of the mortgaged premises, which systems are located wholly within the boundaries of the mortgaged premises and which are wholly owned by the Borrower. All improvements to the culinary water and sewage disposal systems are in compliance with all building, health and zoning codes, restrictions, regulations and other codes and regulations of the city, town or county in which the mortgaged premises is located.

- V... The mortgaged premises and improvements thereon have not been damaged in any way so as to adversely affect the value of the Mortgage to the Agency or the use of such premises and improvements for their intended purpose, and there is no pending or threatened proceeding for the total or partial condemnation of said premises.
- W. . The mortgaged premises, the improvements thereon and their intended use comply with all laws or rules and regulations relating to or governing the protection of the environment; and there is no threatened or pending case or proceeding directly involving the mortgaged premises in which compliance with any such law, rule or regulation is or will be in issue.
- X... If the mortgaged premises is a Condominium Unit or PUD Unit, such unit is located within a Condominium or PUD Project which meets the requirements of the Participation Documents.
- Y... The terms, covenants and conditions of each Mortgage have not been changed in any respect which would materially affect their value, validity or enforceability, the prompt payment of the Mortgage Loan, or the security of the lien of the Mortgage.
- Z. .. The Mortgage is not subject to any existing assignment or pledge, and the Lender has good title thereto and full right and authority to assign and transfer the same and to endorse and deliver the note secured by such Mortgage and all documents described in the Participation Documents free and clear of encumbrances except permitted liens and encumbrances as described in the Participation Documents.
- AA. No counterclaim, offset, defense or right of rescission exists which can be asserted and maintained by the Borrower or his successor in interest against the Agency and the Mortgage complies with all applicable local, state and federal laws, rules and regulations which govern the affairs of the Lender and the Borrower.
- BB. The Lender has not advanced funds, or directly or indirectly induced or solicited any advance of funds by another for the payment of principal, interest, or escrow payments required by the Mortgage.
- CC. The information set forth in the Mortgage Submission Package has been accurately stated, and the amounts of the principal balance and interest including accrued interest, if any, are justly due and owing.

- DD. Each Mortgage, financing statement, and any other document required to be filed in a public office to perfect the lien of the Mortgage for the benefit of the Agency against third parties has been duly and timely filed, registered, or recorded by the Lender in the proper public office in order to give constructive notice thereof to all subsequent purchasers or encumbrances.
- EE. The lien of, or estate created by, the Mortgage has not been satisfied, subordinated or impaired, in whole or in part, except for the payment of principal and interest as disclosed to the Agency by the Lender prior to the Agency's purchase of the Mortgage, no part of the mortgaged property has been released therefrom, nor has any interest or participation in the Mortgage been assigned, and the Lender has not executed any instrument of release, cancellation, subordination, or satisfaction with respect to the mortgage.
- FF.. Reproductions and replicas of UHFA Forms generated by Lender as permitted in the Participation Documents contain, without deviation and in order, all language contained and information to be reported in such UHFA Forms.
- GG. Lender has complied with all applicable local, State and Federal law with respect to the Mortgage Loan.
- HH. All Mortgage Loans submitted to the Agency for purchase shall be in compliance with all terms, conditions, and warranties contained in the Participation Documents.

### **2.05 Agency's Right to Reject Mortgage Loans**

Notwithstanding anything in Participation Documents to the contrary, the Agency shall at all times have the right to decline to purchase any Mortgage Loan offered or submitted to it by the Lender if, in the reasonable opinion of the Agency, the Mortgage Loan does not conform to the requirements of the Act, the Agency's Rules, the Participation Documents, the applicable General Resolution, or the Trust Indenture of the Agency or the Code.

### **2.06 Continuing Nature of Representations and Warranties**

- A. All of the Lender's and Servicer's representations, warranties, covenants and agreements contained in the Mortgage Purchase Agreement and this Selling Supplement shall remain operative and in full force and effect, regardless of: 1) any investigation made by or on behalf of the Agency; (2) delivery of any payment with respect to the Mortgage Loans delivered pursuant to the Mortgage Purchase Agreement; (3) any termination of the Mortgage Purchase Agreement; and (4) any sale, transfer or the termination of servicing of Mortgage Loans under the Mortgage Purchase Agreement.
- B. The Lender or Servicer shall, at its expense, execute all other documents and take all other steps requested by the Agency from time to time to perform the covenants, agreements, representations and warranties contained in the Participation Documents.

## **2.07 Contractual Basis of Relationship between Agency and Lender**

All Mortgage purchase transactions between the Lender and the Agency are on a contractual basis, the contract consisting of the Participation Documents as the same may be amended from time to time.

## **2.08 Representation and Warranty of Agency**

The Agency represents and warrants that the execution of the Mortgage Purchase Agreement has been duly authorized and is in all respects in compliance with the Act, the Agency's By-Laws and Rules, the Participation Documents, the applicable General Resolution or Trust Indenture of the Agency and the Code.

## **2.09 Warranties of Servicer Regarding Compliance of Servicer's Performance**

- A. Servicer shall indemnify the Agency and hold it harmless from any loss, damage or expense that the Agency may sustain as a result of any failure on the part of Servicer to properly perform its services, duties, and obligations under this Agreement, the Participation Documents and under applicable rules, regulations and administrative publications issued by the FHA, VA or RHS and under PMI contracts, certificates, policies, and riders thereto.
- B. Servicer shall, at the Agency's option, purchase a Mortgage Loan from the Agency when Servicer has failed to pay premiums for hazard insurance, flood insurance and or PMI; or where Servicer has failed to pay taxes or other governmental assessments or charges as required in the Servicing Supplement, or when Servicer has failed to perform other obligations required in the Participation Documents..
- C. Servicer is not, and shall not hold itself out to be, the agent of the Agency except for purposes of the collection of Mortgage Loan payments, Escrow Payments and the proceeds of insurance, the foreclosure or obtaining title to Residence, and the deposit of moneys on behalf of the Agency as specified in the Accounting Supplement, unless otherwise directed by the Agency (e.g. to act as a limited agent of the Agency in investigating the truthfulness of various required affidavits).
- D. Servicer shall perform its obligations hereunder and as specified within the Participation Documents in accordance with accepted practices of prudent mortgage lending and servicing institutions in the State and in full compliance with any Federal or State laws and supervisory or regulatory authorities, or with such other standards as required to maintain the insured or guaranteed status of any Federally Insured or Federally Guaranteed or Privately Insured Mortgage Loan.

## PART III

### PURCHASE OF MORTGAGE LOANS

#### **3.01 Mortgage Purchase Agreement / Servicing**

From time to time during the term hereof, the Agency agrees to purchase Eligible Mortgage Loans from the Lender. The sale of each Mortgage Loan to the Agency shall be evidenced and governed by a Mortgage Purchase Agreement and all other Participation Documents to which the Lender is a party.

#### **3.02 Servicing Released**

Lender agrees that any previously executed Servicing Release Agreement is replaced, amended and superceded by the Participation Documents and further agrees to transfer to the Agency the Servicing Rights of each Mortgage Loan purchased hereafter by the Agency subject to the following additional terms:

- A. The Agency shall pay to Lender a Servicing Release Fee equal to the amount shown on the applicable Notice of Availability of Funds at the time said Mortgage Loan is purchased.
- B. If any Mortgage Loan subject to this Agreement becomes two months or more past due within six months after its purchase by the Agency, the Lender shall repurchase the Mortgage Loan within one month of the Agency's written repurchase request. The repurchase price will equal the sum of the unpaid principal balance, the accrued but unpaid interest to the date of repurchase, any escrow advances or other servicing expenses of the Agency, and the Servicing Release Fee paid to the Lender by the Agency for such Mortgage Loan.
- C. Lender shall not engage in any attempt to entice any Borrower whose Mortgage Loan is purchased by the Agency to refinance the Mortgage Loan by: (1) soliciting the Borrower in any manner as a consequence of Lender's maintenance of the Borrower's Mortgage Loan data files or (2) entering into an agreement with any Borrower prior to the purchase of the Mortgage Loan by the Agency.
- D. Except as modified herein, the provisions of this Part III do not adversely affect the rights accrued to either party or any other obligations arising under the Participation Documents. All other terms and provisions of the Participation Documents shall remain in full force and effect except as expressly amended hereby.
- E. Nothing herein shall prevent the Agency from transferring its rights to service any Mortgage Loan subject to this Agreement.

Upon delivery to the Agency of a Mortgage Loan, the Agency will be under no obligation to purchase such Mortgage Loan if it is found that the Mortgage Loan is not an Eligible Mortgage Loan, the Agency has made no Commitment to purchase the Mortgage Loan, or the Commitment has been cancelled or it has expired.

## PART IV

### CONTINUING OBLIGATIONS

#### **4.01 Failure to Maintain Eligible Servicer Status**

If a Servicer fails to maintain its status as an Eligible Servicer as provided in Part II herein or, if its Affiliate that is an Eligible Lender, fails to maintain its status as an Eligible Lender as provided in Part II herein, it shall be deemed to have lost its approval by the Agency to act as an Eligible Servicer. In such case, it shall assign its Servicing Obligations of Agency Mortgage Loans to the Agency, or upon receipt of the Agency's express written consent as required in Part VI herein, to an Eligible Servicer or be subject to having its obligations hereunder terminated. Servicers shall notify the Agency within 10 days of the closing of its Mortgage Loan origination office in the State. An Eligible Lender or Eligible Servicer that was approved by the Agency under previous Eligible Lender or Eligible Servicer standards or requirements of the Agency shall continue to be eligible under those standards and requirements. However, failure to maintain such previous standards or requirements that results in a loss of eligibility shall cause any new standards or requirements of the Agency to be applicable in order to regain the status of an Eligible Lender or Eligible Mortgage Servicer.

#### **4.02 Evidence of Continuing Eligibility**

Servicers shall deliver to the Agency a Lender/Servicer Certificate of Qualification (UHFA Form 123) upon the request of the Agency, which certification shall evidence Servicer's continuing eligibility to service Mortgage Loans for the Agency.

Servicer's personnel shall receive training as required by the Agency prior to the commencement of the servicing of any Agency Mortgage Loans and periodically as determined by the Agency in the course of the Agency's review of Mortgage Loans serviced for the Agency.

#### **4.03 Fidelity Coverage; Mortgage Errors and Omissions Insurance**

A. Coverage Lender shall at all times and at its expense maintain in effect:

1. A blanket fidelity bond, and for Servicers only an errors and omissions insurance policy, which cover
  - a. All of Lender's officers, and
  - b. All employees and other persons authorized by Lender to act on behalf of Lender with respect to Agency Mortgage Loans, or
2. A direct surety bond covering any such persons not covered by the fidelity bond or errors and omissions policy. A Lender that is a subsidiary of another institution may use the parent company's fidelity bond and errors and omissions policy provided that Lender is named as a joint insured in the bond or policy. Such coverage shall be equal to or greater than the minimum coverage required by Fannie Mae or Freddie

Mac, whether or not Lender is servicing mortgages for Fannie Mae or Freddie Mac. The terms of the coverage may provide for deductibles that do not exceed the maximum deductible amounts permitted by Fannie Mae or Freddie Mac. Insurers that are acceptable to Fannie Mae or Freddie Mac are acceptable to the Agency.

- B. Loss Provisions The Agency shall be named as a "loss payee" on drafts the insurer issues to pay for covered losses incurred by the Agency. The Agency must have the right to file a claim directly with the insurer (whenever this provision can be obtained) if Lender fails to file a claim for a covered loss incurred by the Agency.
- C. Reporting Upon request, the coverage, deductibles and underwriter of the Lender's fidelity bond or direct surety bond(s) and errors and omissions policy shall be reported to the Agency by the Lender. A copy of the fidelity bond, surety bond and errors and omissions policy shall be delivered to the Agency at least annually within one month after Lender obtains or renews them.

Failure by the Lender to deliver a copy of the fidelity bond, surety bond and errors and omissions policy within one month of its issue or renewal constitutes a Default of the Lender hereunder. Such failure shall cause the Agency to take the actions described in Part V herein.

- D. Cancellation of Coverage or Refusal to Renew Lender shall obtain the insurer's agreement to notify the Agency of a cancellation at least one month before a fidelity bond or direct surety bond or errors and omissions policy is going to be canceled for any reason. Lender shall promptly notify the Agency of any insurer's refusal to renew a fidelity bond or direct surety bond or errors and omissions policy at the expiration of a premium period. Lender shall also notify the Agency of any more restrictive terms required by any insurer as a condition for renewal.
- E. Embezzlement, Fraud and Claims Against Underwriter or Surety Lender shall promptly report to the Agency all cases of embezzlement, fraud, criminal or dishonest acts by any employee, officer or agent of Lender that involve Agency Mortgage Loans or Agency funds. . Lender shall promptly report any claims made against any underwriter or surety in connection with any Agency Mortgage Loan or any Agency funds.

#### **4.04 Servicing Personnel, Obligations and Facilities**

Servicer shall maintain adequately equipped Mortgage Servicing facilities, that are fully staffed with experienced and capable personnel who perform all Servicing Obligations for the Mortgage Loans and who are knowledgeable of the requirements for servicing Agency Mortgage Loans. Obligations performed by Servicer shall include, but not be limited to, the receipt and accounting for Mortgage Loan payments and Escrow Payments, the active collection of late Mortgage Loan payments and Escrow Payments, the making of remittances to the Agency, the accounting and reporting to the Agency for such collections and remittances, the commencement of foreclosure proceedings and monitoring of bankruptcies, the filing of insurance claims, and all other duties

and obligations as required herein and in the Servicing Supplement and the Accounting Supplement. Except for the use of a lockbox service, the payment and monitoring of property taxes, the monitoring of insurance coverage and the inspecting of property, all such Servicing Obligations shall be performed at all times only by Servicer's personnel and offices. Servicer's personnel shall be familiar with all requirements affecting Mortgage Loans serviced for the Agency.

To assure that its employees are knowledgeable in all aspects of servicing, the Servicer shall have complete written procedures and shall have implemented processes to determine that its officers and employees adhere to such written procedures. The Agency acknowledges that occasionally certain areas of a Servicer's performance may show poor results despite the Servicer's efforts, e.g., high delinquencies attributable to regional economic problems might become a continuing problem for a Servicer. If a problem beyond the control of a Servicer should develop, the fact that the Servicer has sound written procedures that are faithfully followed by its employees will be a positive factor in the Agency's overall evaluation of the Servicer's performance.

Servicer's personnel and information related to their Mortgage Loan records shall be reasonably accessible to Borrowers so that information regarding their Mortgage Loan and assistance from the Servicer may be obtained in a timely manner. Servicers shall establish and maintain a toll free telephone number or shall accept collect telephone calls from Borrowers to ensure that no Borrower shall have to incur long distance telephone charges in order to obtain such assistance and information from Servicer.

#### **4.05 Servicer's Financial Statements**

Servicer shall submit to the Agency annually, within three months of its fiscal year end, its audited annual financial statements prepared under generally accepted accounting principles, including the opinion of an independent public accountant. The financial statements shall meet the requirements imposed by either Fannie Mae or Freddie Mac. When Servicer's financial condition is reflected on a consolidated basis with that of a parent company or companies, consolidating information shall be submitted to the Agency.

The financial statements shall be accompanied by a statement of the independent public accountants that such accountants have made an examination of Servicer's records and documents in accordance with the Mortgage Bankers Association of America Uniform Single Attestation Program for Mortgage Bankers (USAP). The independent public accountants statement must verify that the examination included a review of the records relating to, and the documents held by the Servicer with respect to the Mortgage Loans serviced for the Agency. The USAP Report shall be submitted to the Agency promptly upon completion of the audit.

If Servicer is an FDIC or NCUA insured depository that is supervised and examined by a State or Federal regulatory agency and Servicer certifies that the financial statements it submits to the Agency are identical to those submitted to its supervising authority, Servicer is not required to provide an independent public accountant's opinion regarding the USAP examination.

#### **4.06 Audits of Lenders and Servicers by Agency**

The Agency may audit each Lender and Servicer periodically to test for compliance with the requirements set forth in the Participation Documents.

The Agency shall provide reasonable notice to the Lender or Servicer of the beginning date of any audit and may request that specific files, records and materials be made available to the Agency. Representative(s) of the Agency may conduct the audit at the offices of the Lender or Servicer, or may request the Lender or Servicer to deliver files, records or other appropriate material to the Agency's office for the audit. Lender or Servicer shall provide working space for the Agency representative(s) and deliver such records, files and materials by the date(s) specified by the Agency.

The audit scope may include, but not be limited to, such areas as: (1) compliance with Agency requirements and Federal and State laws and regulations, (2) underwriting quality, (3) compliance with FHA, VA, RHS or PMI requirements, (4) document retention, (5) cash control, escrow accounting and remittance compliance, (6) servicing adequacy, and (7) default servicing and early default management.

Lender agrees to take corrective actions to cure any deficiencies or violations of the applicable requirements that are found through the audits. When timely and adequate corrections are not (or cannot) be completed to the satisfaction of the Agency, Lender will be deemed to be in default and the Agency may pursue any and all remedies outlined in Participation Documents.

#### **4.07 Conflicts of Interest; Servicer's Access to Confidential Information Concerning Borrowers' Accounts**

Through normal servicing activities, including the servicing of delinquencies, the Agency acknowledges that Servicers sometimes obtain confidential information concerning Borrowers and mortgaged properties. Servicer and its officers, employees, agents or Affiliates shall not use such confidential information in any way that can be construed to represent a conflict of interest or an unfair advantage to the user. All such information shall be used in a manner consistent with any applicable law or regulation regarding disclosure of credit information.

Under Utah's Government Records Access and Management Act, all records related to each Mortgage Loan file, except for those that are publicly recorded in the appropriate county recorder's office, are deemed "Private Records" and may not be disclosed by the Servicer. Servicers shall not deem this to mean that a Borrower's payment history may not be reported to a proper national credit-reporting agency.

No Residence that secures a Mortgage Loan may be acquired by a Servicer or by its officers, employees, agents or Affiliates, unless the Agency has provided Servicer with written notification that it does not object to the acquisition of a specific Residence.

#### **4.08 Compliance with Applicable Law**

In originating, servicing and enforcing Mortgage Loans, Lender and Servicer covenant to comply with all applicable local, State, and Federal laws, including without limitation those that relate to fair housing, equal credit opportunity, truth in lending, settlement procedures, fair debt collection practices, fair credit reporting, information reporting requirements of the Federal and State governments, notice of servicing assignment, persons with disabilities, and wrongful discrimination in residential lending.

#### **4.09 Duration of the Servicing**

Commencing on the effective date of each Mortgage Purchase Agreement and continuing until the payment in full of all principal and interest due under the Mortgage Loans serviced hereunder, and the remittance to the Agency or its Bond Trustees of all collections less servicing fees and payment of all escrow payments, or until the Servicing Obligations are terminated in accordance with Part V or VI herein, Servicer shall to the best of its ability and in compliance with the provisions of the Servicing Supplement act in all respects as Servicer of such Mortgage Loans for and on behalf of the Agency.

All of Servicer's representations, warranties and agreements contained herein shall remain operative and in full force and effect, regardless of any investigations made by or on behalf of the Agency, and any termination, transfer, sale or assignment of the Servicing Obligations under the Participation Documents, and shall survive any such termination, transfer, sale or assignment.

**PART V**  
**REMEDIES**

**5.01 Duty to Repurchase Mortgage Loans**

Within thirty days of the Agency's written request, the Lender shall repurchase from the Agency a Mortgage Loan and any Agency Subordinate or Second Mortgage Loan made in connection therewith, under any one or more of the following circumstances:

- A. If any of the original documents with respect to a Mortgage Loan differ in any material respect from the copies delivered to the Agency.
- B. If any of the underwriting analysis performed by the Lender is based on data which differs in any material respect from the data provided by the Applicant or any third party whose verification of such data was obtained.
- C. The Lender fails to deliver any documents or information as the Agency reasonably requests to be delivered following the purchase of an Incomplete Mortgage by the Agency.
- D. Improvements, alterations or repairs to the property securing the Mortgage Loan as contemplated by the appraisal are not completed within 120 days of the execution of the Mortgage.
- E. If it is discovered that the Mortgage Loan is not, in the reasonable opinion of the Agency, an Eligible Mortgage Loan.
- F. In the event that any warranty or representation made by the Lender pursuant to the Participation Documents, including those set forth herein, are, in the opinion of the Agency, untrue or incorrect when made or upon delivery of a Mortgage Loan to the Agency.
- G. In the event that the Borrower or any other party in the Mortgage transaction has made any false representation in connection with Mortgage Loan, whether or not Lender was a party to or had knowledge of such false representation.
- H. In the event that FHA, VA, RHS or a PMI: (1) cancels coverage, (2) cancels the mortgage guarantee or (3) denies a claim because of fraud, misrepresentation or omission of a material fact or any other reason affecting the Mortgage Loan for mortgage insurance or guarantee.

Lender shall repurchase a Mortgage Loan, and any related Subordinate Mortgage Loan from the Agency for the sum of:

- The original par amount of the Note, MINUS (-)

- Any principal paid and remitted to the Agency, PLUS (+)
- Any interest accrued but not remitted to the Agency, PLUS (+)
- Any servicing release premium or other special fees paid by the Agency for the Mortgage Loan.

## **5.02 Termination**

In the event the Agency sells, assigns or otherwise disposes of its interest in one or more of the Mortgage Loans, then Servicer's Servicing Rights and Servicing Obligations under the Participation Documents shall be deemed to be terminated with respect to such Mortgage Loans, unless Servicer is notified otherwise.

## **5.03 Controlling and Reporting Delinquencies: Acceptable Levels of Performance**

An acceptable level of performance by Servicer is required in order to maintain its Eligible Servicer status. Failure of Servicer to maintain an acceptable level of delinquent Mortgage Loans as described below, and failure of Servicer to accurately and completely report delinquent Mortgage Loans to the Agency on the Monthly Delinquency Extract Report, as required by the Accounting Supplement constitutes a Default of the Servicer under the Participation Documents.

Within any twelve consecutive month period, if the monthly delinquency rate for a Servicer exceeds 7%, Servicer shall be deemed to be in Default hereunder, and the actions described in Part V herein will be taken. Servicers servicing fewer than 50 Mortgage Loans will be reviewed on an individual basis; however, if the monthly delinquency rate for a Servicer exceeds 10%, Servicer shall be deemed to be in Default hereunder, and the actions described in Part V herein will be taken.

Exceptions Mortgage Loans in the seven categories described below, and accurately reported by the Servicer in its Monthly Delinquency Extract Report (which generally reflects those loans three months or more delinquent) will not be counted against the Servicer's acceptable level of performance for the monthly delinquency rate.

- A. Mortgage Loans for which foreclosure may not be pursued because a deceased mortgagor's estate is in probate (Delinquency Status Code 31).
- B. Mortgage Loans for which the Servicer has granted "Military Indulgence" as provided in Part III of the Servicing Supplement (Delinquency Status Code 32).
- C. Mortgage Loans which have been referred to one of the Foreclosure Counsel designated by the Agency and listed on an Exhibit in the Servicing Supplement, to take legal action to acquire the property (Delinquency Status Code 43).
- D. Mortgage Loans for which the Borrower has indicated willingness to give a deed-in-lieu and Servicer has completed its thorough review of all pertinent factor and has determined that it is in the best interest of the Agency to accept a voluntary conveyance of the

Residence instead of initiating foreclosure proceeding in accordance with Part V herein (Delinquency Status Code 44).

- E. Mortgage Loans for which a bankruptcy has been filed and which has not been dismissed or had the automatic stay lifted (Delinquency Status Code 65, 66 or 67).
- F. Mortgage Loans for which forbearance has been granted, a written confirmation has been issued to the Borrower from the Servicer and the payments under the repayment plan are current (Delinquency Status Code 09).
- G. Mortgage Loans for which Servicer has a written approval or confirmation that FHA or VA will accept an assignment (or its equivalent) of the Mortgage Loan (Delinquency Status Code 49).

Servicers must, for a period of not less than two years after such reporting, maintain written documentation of the eligibility of each Mortgage Loan reported in any of the seven categories described above in the Monthly Delinquency Extract Report and provide such documentation to the Agency upon its request.

#### **5.04 Warnings and Penalties**

Notwithstanding the right of the Agency under this Part V to give notice of Default as a result of the failure of Lender to perform its obligations, duties and responsibilities in accordance with the Participation Documents, the Agency may choose in its discretion to give warnings and assess penalties following certain of such failures as follows:

Within any 12 consecutive month period, if Lender fails to perform its obligations, duties and responsibilities following the procedures set forth in the Participation Documents, the following actions may be taken:

- A. First Failure The Agency may send written notification to Lender of its failure and the consequences of subsequent failures. Additionally, in the case of Lender's failure to maintain an acceptable level of delinquent Mortgage Loans, the Agency may assess Lender a penalty of \$100.
- B. Second Failure The Agency may send written notification to Lender of its failure and the consequences of subsequent failures. Additionally, the Agency may assess Lender a penalty of \$100. (\$250 in the case of Lender's failure to maintain an acceptable level of delinquent Mortgage Loans.)
- C. Third Failure The Agency may send written notification to Lender of its failure and the consequences of subsequent failures. Additionally, the Agency may assess Lender a penalty of \$250. Should the Lender's failure have been to achieve and maintain a level of delinquent Mortgage Loans within the requirements specified herein, the Agency may assess Lender a penalty of \$500 and the Lender may be placed on probation for twelve months. During the probationary period, if the Lender fails to maintain an acceptable

level of delinquent Mortgage Loans, the Lender and any Affiliate for whom Lender is servicing Mortgage Loans will be subject to (1) being suspended or terminated as Lender or Servicer, (2) a penalty of \$500, (3) the loss of its Eligible Servicer status including its ability to act as a Subservicer for any Master Servicer, and (4) being barred from participation as an Eligible Lender in the Program for a period of three years. A description of the Termination of Servicing by the Agency is presented in Part V herein.

- D. Subsequent Failures The Agency will send written notification to Lender of its failure and the consequences of subsequent failures. Such failures may involve consequences for the Lender and any Affiliate for whom Lender is servicing Mortgage Loans. Such consequences may include (1) suspension or termination as Lender and Servicer, (2) a penalty of \$500, (3) the loss of its Eligible Servicer status including its ability to act as a Subservicer for any Master Servicer, and (4) being barred from participation as an Eligible Lender in the Program for a period of three years.

The following table summarizes actions the Agency can take when a Lender fails to perform its obligations, duties and responsibilities, or fails to achieve and maintain an acceptable level of performance within any 12-month period.

<u>Failure</u>	<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Subsequent</u>
Late Delivery of Lender's Financial Statements	Warning	\$100	\$250	\$500 or Termination
Late Delivery of Lender's Fidelity / Surety Bond or Errors and Omissions Policy	Warning	\$100	\$250	\$500 or Termination
Failure to Deliver Mortgage Loan File	\$400	\$400	\$500	\$500 or Termination
Total Delinquency Rate Exceeds 7.0%	\$100	\$250	\$500 and Probation	\$500 or Termination
Late Reporting of Delinquent Loan File Extract	Warning	\$100	\$250	\$500 or Termination
Inaccurate Reporting of Delinquent Loan File Extract	Warning	\$100	\$250	\$500 or Termination
Late Remittance of Payoffs	Warning	\$100	\$250	\$500 or Termination
Late Remittance of Monthly Installments	Warning	\$100	\$250	\$500 or Termination

Inaccurate Remittance of Payoffs	Warning	\$100	\$250	\$500 or Termination
Inaccurate Remittance of Monthly Installments	Warning	\$100	\$250	\$500 or Termination
Late Reporting of Mortgage Loan Activity Report	Warning	\$100	\$250	\$500 or Termination
Inaccurate Reporting of Mortgage Loan Activity Report	Warning	\$100	\$250	\$500 or Termination
Late Submission of Report Corrections (two business days)	Warning	\$100	\$250	\$500 or Termination
Any other failure	Warning	\$100	\$250	\$500 or Termination

If Lender fails to pay any penalty assessed by the Agency within one month of such assessment, or if, in the sole opinion of the Agency, the Lender regularly fails to perform one or more of its obligations, duties and responsibilities, or regularly fails to achieve and maintain an acceptable level of performance, or is regularly or grossly, as determined by the Agency, in Default under the Participation Documents, the Lender and any Affiliate for whom Lender is servicing Mortgage Loans will be subject to (a) being suspended or terminated as Lender or Servicer, (b) the loss of its Eligible Servicer status, and (c) being barred from participation as an Eligible Lender in the Program for a period of three years.

**5.05 Events of Default; Termination by the Agency**

Notwithstanding the right of the Agency to give warnings and assess penalties under this Part V as a result of the failure of Lender to perform certain of its obligations, duties and responsibilities in accordance with the Participation Documents, the Agency may, in its discretion, terminate the Lender's Servicing Obligations hereunder and the obligations and rights of any Affiliate for whom Servicer is servicing Mortgage Loans upon the occurrence of any of the following events of Default:

- A. Lender or Servicer shall fail to perform any one or more of its obligations, duties or responsibilities, arising under the Participation Documents and shall continue in Default thereof for a period of one month after notice to Lender or Servicer by the Agency of said failure and Default; or
- B. Failure of the Lender or Servicer to notify the Agency of any of the events requiring notice to the Agency described in Part V or Part VI herein; or
- C. Any finding that any representation or warranty contained herein or within any Participation Document is untrue.

If any of the events specified in A, B or C, within this Section shall occur, Lender shall give written notice of such occurrence to the Agency within two business days of the happening or

Lender's finding of such event. Failure to notify the Agency of such occurrences will be deemed a Default hereunder and shall be grounds for termination of Servicer's Servicing Obligations hereunder.

Such termination of the Servicing Obligations shall not operate to invalidate the remainder of the Agreement, but shall be severable therefrom.

Upon any termination of the Servicing Obligations, Servicer shall immediately deliver or cause to be delivered to the Agency all funds held for the Agency or any Borrower.

Upon any termination of the Servicing Obligations, Servicer shall, within seven business days and at its expense (except where otherwise agreed to in writing by the Agency), deliver or cause to be delivered to the Agency or such other person as directed in writing by the Agency, all the books and records, brought current to the date of termination, that Servicer has maintained for the Mortgage Loans, including all Mortgage Loan files, tax bills, assessment notices, insurance premium notices and all other documents as listed and set forth in Parts IV, V, and VI of the Selling Supplement. In the event Servicer declines or fails to provide all books and records, brought current, Servicer agrees to pay all costs incurred by the Agency in ascertaining such information.

Upon any termination of the Servicing Obligations, Servicer shall comply with all State and Federal Borrower notification requirements and shall cease all efforts to obtain the collections of revenues and escrow payments. Any collections received by Servicer after termination shall be immediately endorsed by Servicer in favor of the Agency, where necessary, and remitted directly to the Agency or such other person as the Agency shall designate without deposit into any account of Servicer.

No further consideration shall be due to a Servicer from the Agency other than the Servicing Fee as a result of the termination of a Servicer's Servicing Obligations.

#### **5.06 Bankruptcy, Insolvency or Debarment of Lender or Servicer**

Lender shall immediately notify the Agency by phone and in writing within two business days of any of the following occurrences that might significantly impact day-to-day operations:

- A. Lender or Servicer shall initiate or suffer any proceedings of insolvency or reorganization under the Bankruptcy Act, or any other Federal or State receivership law or make any common law assignment for the benefit of creditors or written admission by Lender or Servicer of its inability to pay debts generally as they occur;
- B. The issuance of a decree or order of a court, agency or supervisory authority having jurisdiction in the premises appointing a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceeding affecting Lender or Servicer respectively; or substantially all of its properties, or for the termination or liquidation of its affairs, if such decree or order shall have remained in force undischarged or unstayed for a period of sixty (60) days;
- C. The consent by Lender or Servicer respectively, to the appointment of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceeding affecting Servicer or substantially all of its properties;

- D. Lender or Servicer shall be put on probation, be debarred or have its activities restricted in any manner whatsoever by any agency of the Federal or State government.

Any occurrence described in this Section shall be deemed to be a Default and shall be grounds for the termination of the Servicing as provided for in Part V herein.

### **5.07 Remedies**

The Agency shall have all remedies available at law or in equity to enforce the requirements, warranties and covenants of Lender and Servicer hereunder and under the Participation Documents including, but not limited to, the actions, including the assessment of financial penalties, described in Part V herein, rescission of the Participation Documents, termination of the Servicing Obligations, equitable relief by way of injunction (mandatory or prohibitory) to prevent the breach or threatened breach of any provision hereof or to enforce performance hereof. Upon termination of the Servicing Obligations, Servicer and its Affiliates, including a participating Lender that is an Affiliate, shall have no further rights hereto.

No delay in exercising or omission to exercise any remedy, right or power accruing upon any event of Default or breach by the Lender or Servicer, shall impair that remedy, right or power or shall be deemed to be a waiver of any event of Default or breach or acquiescence therein. Every remedy, right and power available to the Agency may be exercised from time to time and as often as may be deemed expedient by the Agency.

No waiver of any event of Default or breach under any Participation Document shall extend to or affect any subsequent event of Default or breach or shall impair any right, remedy, or power consequent thereon.

No remedy conferred upon or reserved to the Agency herein is intended to be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to any other remedy given hereunder or otherwise to the Agency now or hereafter existing. The exercise of a remedy by the Agency or any one or more of them shall not in any way alter or diminish the rights of the Agency to any other remedy provided herein or by law.

In the event of any Default and/or breach by Lender or Servicer, the Agency shall be entitled to reimbursement from Lender or Servicer of all of Agency's costs in enforcing any of the terms of the Participation Documents including any reasonable or necessary attorney's fee.

The Agency may choose any of the remedies above that it determines will most suitably resolve a Default or breach of the Participation Documents. It is expressly stipulated and agreed that the Third Judicial District Court in and for Salt Lake County, State of Utah shall have exclusive jurisdiction and venue of all proceedings based on or arising out of the enforcement of the terms

of the Participation Documents as amended, or the collection of damages resulting from a Default or breach of the Participation Documents, as amended.

## **PART VI**

### **OTHER AGREEMENTS**

#### **6.01 No Waiver**

No waiver by either party of any covenant or condition of the Participation Documents shall be valid unless in writing and signed by the party so waiving and no waiver of any term or condition by the Agency shall be deemed a continuing waiver. Inaction or failure to demand strict performance of any covenant or condition of the Participation Documents shall not be deemed a waiver.

#### **6.02 Jurisdiction**

This Agreement is made and entered into in the State and all questions relating to the validity, construction, performance and enforcement thereof shall be governed by the laws of the State.

#### **6.03 Invalidation**

Invalidation 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.

#### **6.04 Successors**

The Lender, Servicer and the Agency hereby agree that all of the covenants and agreements herein contained shall extend to and be obligatory upon all successors of the respective parties.

#### **6.05 Assignment of Servicing Obligations**

Servicer may only assign its Servicing Obligations, in whole or in part, if the Agency gives its prior written consent to the proposed assignment. Servicers may not transfer the servicing of Mortgage Loans to another Servicer for a period of three years following the date of the purchase by the Agency of those Mortgage Loans. Such transfers will only be approved to an Eligible Servicer. Servicer and its assignee must have complied with the following conditions:

- A. Notice of the proposed assignment, shall be provided to the Agency not less than sixty (60) days prior to the date of the proposed assignment;
- B. Servicer, its assignee and the Agency shall enter into a form of agreement provided by the Agency which agreement shall contain representations, warranties and covenants by the assignee acceptable in form and substance to the Agency, including but not limited to representations, warranties and covenants that:
  1. It is an Eligible Servicer under the Participation Agreement;
  2. The assignee will be bound by all the terms, conditions, and covenants and that it will assume all Servicing Obligations of Servicer under the Participation Documents;

3. All Servicing Obligations and duties will continue uninterrupted;
  4. All Borrowers will receive reasonable notice of the transfer of servicing, including notices required under Federal or State law; and
  5. All providers of mortgage insurance or guarantees and hazard and flood insurance will receive notice as they require.
- C. Payment to the Agency of a fee shall have been made, which fee, the Agency shall have determined to be adequate, in its sole discretion, to cover its costs to have effected the transfer. Such fee shall not be less than the greater of \$500 or one dollar for each Mortgage Loan transferred plus reasonable out of pocket expenses actually incurred by the Agency, if any, such as attorneys fees, travel costs, etc.

#### **6.06 Sale or Other Transfer of Mortgage Loans**

Nothing herein shall prevent the Agency from selling or transferring the Mortgages serviced by the Servicer hereunder without the consent of Servicer or without first giving Servicer the opportunity to purchase or repurchase the Mortgages.

#### **6.07 Changes in Servicer's Organization**

Servicer shall give not less than two months written notification to the Agency before the occurrence of any of the following occurrences of the Servicer or its parent:

- Merger,
- Consolidation,
- Changes of name or corporate charter, etc. or
- Change of ownership of one-third (1/3) or more of the stock of Servicer or any parent corporation if Servicer is a wholly owned subsidiary of another corporate entity.

Servicer shall immediately give written notification to the Agency of the finalization or completion of any such occurrences. Any change in the organization of the Servicer shall be deemed an Assignment of Servicing Obligations and requires written approval of the Agency. The Agency may in its sole discretion refuse to grant its approval and may terminate the Servicing Obligations upon any occurrence described in this Section.

#### **6.08 Reduction of Interest Rate**

If directed by the Agency, Servicer shall bill the payments on each Mortgage Loan at a reduced interest rate, subject to such rate being reinstated to the original rate, all as specified by the Agency, if the Agency determines such reductions to be necessary or advisable in order to reduce the interest to within such limits as may be necessary to preserve the Federal tax-exemption on

its Bonds or other obligations that the Agency has issued or expects to issue in order to finance the Mortgage Loans. The Agency further agrees that any reduction of interest rate directed with respect to any Mortgage Loan subject to being repurchased by Servicer pursuant to the Participation Documents shall be accomplished in a manner that will preserve the right of Servicer to re-establish

the interest rate to the original rate for the remainder of the term of such Mortgage Loan. No reduction directed by the Agency shall reduce the servicing fee.

#### **6.09 Notices Sent to Principal Office**

Notices to the Agency, Lender or to the Servicer shall be sent to the respective office specified in Part I herein, unless otherwise directed in writing in accordance with the applicable Participation Documents.

#### **6.10 Consideration**

Servicer's consideration for servicing Mortgage Loans hereunder shall be the Servicing Fee set forth in the Participation Documents. No further consideration shall be due to a Servicer from the Agency other than the Servicing Fee even as a result of other occurrences described herein, including the sale, assignment, termination or purchase of a Servicer's Servicing Obligations; or the early payment in part or in full of a Mortgage Loan; or the foreclosure, acceptance of a deed-in-lieu of foreclosure, the assignment, or assumption of a Mortgage Loan.

#### **6.11 Termination by Lender**

In the event that Lender shall no longer desire to originate and sell Mortgage Loans to the Agency hereunder, Lender shall give written notice thereof to the Agency, in which case the Agency shall no longer be obligated hereunder to purchase Mortgage Loans; provided, however, that in such event, Lender shall remain liable for all of its obligations under the Participation Documents so long as any Mortgage Loans which were previously purchased from Lender remain in existence.

In the event that Lender shall no longer desire to service Mortgage Loans for the Agency hereunder, Lender shall give written notice thereof to the Agency, in which case the Servicing Obligations must be transferred to the Agency or another Eligible Servicer approved in writing by the Agency utilizing such transfer documents as prescribed by the Agency. Until such Agency approved transfer has occurred, Servicer shall remain liable with respect to its Servicing Obligations as set forth in Part IV herein.

If Lender's desire to terminate its Servicing Obligations is because of amendments or additions to the Participation Documents as outlined in Part I herein, Lender shall notify the Agency in writing of its desire to discontinue servicing before such amendment or addition takes effect and Lender's notification shall specify the amendments or additions that are the cause of Lender's decision. In such case, provided that the Agency concludes there will be no harm to Borrowers or the Agency, the Agency may waive the effective date of amendment for a period of up to 120 days to allow Lender adequate opportunity to transfer such Servicing Obligations to the Agency or another Eligible Servicer. If Lender fails to notify the Agency of its desire to discontinue

Servicing before the effective date of the amendment or addition, such amendment or addition shall become effective as specified in the Agency's notice.

## EXHIBIT A

### DEFINITIONS

**Accounting and Reporting Supplement** or **Accounting Supplement** means the Single Family Mortgage Program Accounting and Reporting Supplement to Participation Agreement, as amended, which is incorporated by reference.

**Acquisition Cost** means, as to a Residence, the cost of acquiring the Residence from the seller as a completed residential unit, including: (a) all amounts paid, either in cash or in kind, by the Borrower (or a related party or for the benefit of the Borrower) to the seller (or a related party or for the benefit of the seller) as consideration for the Residence, (b) the purchase price of the land, and (c) if the Residence is incomplete, the reasonable cost of completing it, whether or not cost of completing the construction is to be financed with Bond proceeds (to the extent that the builder thereof normally completes work on similar residences which he builds, and so that occupancy thereof is legally permitted) but Acquisition Cost does not include (i) usual and reasonable settlement or financing costs (but only to the extent that such amounts do not exceed the usual and reasonable costs which would be paid by the Borrower where financing is not provided through the proceeds of Bonds the interest on which is excludable from the gross income for Federal income tax purposes), and (ii) the value of services performed by the Borrower or members of his or her family (“family” shall include only the Borrower’s brothers, sisters, spouse, ancestors and lineal descendants) in completing the Residence.

In a circumstance when there is no seller of the Residence, such as an “owner built” residence, the costs which must be counted toward the determination of the Acquisition Costs include the amounts paid in cash or in kind for land, materials, labor, overhead, architectural fees, plans, permits, construction loan interest and all other costs except those excluded in (c)(i) and (c)(3ii) in the preceding paragraph.

In a circumstance when all or a portion of the land is given to the Borrower as a gift, the purchase price of the land paid by the donor of the gift shall be included within the Acquisition Cost.

**Acquisition Cost Limits** means the Acquisition Cost Limits established and amended by the Agency pursuant to the Rules but in no event greater than the Acquisition Cost Limits permitted by Section 143(e) of the Code. The Acquisition Cost Limits established by the Agency from time to time are set forth in the Notice of Availability of Funds, as applicable.

**Act** means the Utah Housing Finance Agency Act, Title 9, Chapter 4, Part 9, Utah Code Annotated, 1953, as amended, from time to time.

**Addendum** means the Agency’s form of Addendum to Deed of Trust (UHFA Form 014 or 014a) or the Agency’s form of Tax Exempt Rider to Deed of Trust (UHFA Form 014b).

**Affiliate** means any person or entity (including, but not limited to, a general partner or managing member, or an officer of either) that controls a Lender, is controlled by a Lender, or is

under common control with the Lender. The term "control" means the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of the Lender. For the purposes of this definition, the term "ownership" means that the owning entity owns 100% of the total issued and outstanding ownership interests of the owned entity, whether such ownership interests are comprised of stock, partnership or membership interests, or otherwise.

**Agency or UHFA** means the Utah Housing Finance Agency, an independent body politic and corporate of the State of Utah, created by the Act.

**Applicant or Co-Applicant** means a person who has signed an Application for a Mortgage Loan that has not been closed.

**Application** means (for the purpose of calculating Gross Income) the signing by the Borrower of the initial "Uniform Residential Loan Application".

**Application Agreement** see "Invitation to Participate"

**Appraised Value** means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (a) buyer and seller are typically motivated; (b) both parties are well informed or well advised, and each acting in what he considers his own best interest; (c) a reasonable time is allowed for exposure in the open market; (d) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (e) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. In the valuation of properties, an appraiser shall not consider value assigned to furniture or any other personal property.

**Appraised Value Limits** means the Appraised Value Limits established and amended by the Agency pursuant to the Rules. The Appraised Value Limits established by the Agency from time to time are set forth in the Notice of Availability of Funds, as applicable.

**Average Area Purchase Price** means the most current average area purchase price under the safe harbor limitations from time to time published by the Department of Treasury for each applicable Metropolitan Statistical Area or other area within the State, stated separately with respect to residences which have not been previously occupied and residences which have been previously occupied; provided, however, that in lieu of such safe harbor limitations, the average area purchase price may be determined by the Agency in accordance with the Code, but only upon receipt by the Agency of an opinion of bond counsel that the use of the average area purchase price so determined by the Agency shall not cause interest on the related Bonds to be included in the gross income of the recipient thereof for Federal income tax purposes.

**Bonds** means the bonds issued and delivered under the applicable General Resolution or Trust Indenture of the Agency, the proceeds of which are used by the Agency to purchase Mortgage Loans.

**Borrower, Co-Borrower, Mortgagor or Co-Mortgagor** means a person who is obligated to repay a Mortgage Loan; however, such terms shall not include a Cosigner.

**Borrower Affidavit** means an affidavit in a form prescribed by the Agency given by the Borrower in connection with the execution of a Mortgage Note for a Mortgage Loan.

**Closing or Origination** means execution and delivery of a Mortgage Note and Mortgage, or in the case of an assumption of the payment obligations of a Mortgage Loan, the execution and delivery of a Deed of Trust Assumption Agreement in a form provided by the Agency.

**Code** means the Internal Revenue Code of 1986, as amended (including all related Regulations, whether or not temporary).

**Commitment** means the Agency's agreement to purchase a Mortgage Loan based upon the purchase price and the amount of Mortgage Loan, as stipulated in the Mortgage Purchase Agreement.

**Commitment Fee** means the fee set forth in the Notice of Availability of Funds payable to the Agency by a Lender in consideration of the Agency's making a Commitment to a Lender.

**Commitment Procedures** means a document utilized under the Program from 1987 to 2000 that set forth procedures to obtain a Commitment from the Agency under its Single Family Mortgage Loan Programs. The Commitment Procedures have been superseded by the Participation Documents.

**Condominium Project** means a residential real estate project whereby two or more dwelling units are separately offered or proposed to be offered for sale, created pursuant to Utah Law.

**Condominium Unit** means a Residence, as defined herein, which is a physical part of a Condominium Project together with an undivided interest in common in the common areas and facilities of the Condominium Project.

**Conventional** means with respect to mortgage insurance, Privately Insured. (See Privately Insured)

**Co-Applicant** see "Applicant"

**Co-Borrower or Co-Mortgagor** see "Borrower"

**Cosigner** means a person who is an obligor under a Mortgage Note but who is not a Mortgagor; i.e., a person who has executed a Mortgage Note but who has not executed a Mortgage. A Cosigner may not have any ownership interest in the Mortgaged Premises.

**Current Annual Household Income** means the Gross Income of the Borrower's Household, for the Current Year.

**Current Year** means the 12-month period beginning either: (a) the date of the Application if Closing occurs within four months of the date of such Application; or (b) the date of Closing, if Closing occurs more than four months after the date of such Application.

**Default** means:

- A. With respect to a Mortgage Loan, the failure of a Borrower to perform any obligation required under a Mortgage Note, Mortgage, Addendum or Borrower Affidavit;
- B. With respect to the Participation Documents, a failure of Lender or Servicer to perform its obligations, duties and responsibilities, or a failure of Lender or Servicer to achieve and maintain an acceptable level of performance including, but not limited to, those items specified under Part V herein.

**Delinquent** or **Past Due** means, with respect to any Mortgage Loan, one or more monthly Mortgage Loan installment having not been received by the Servicer before the end of the month in which the installment is due.

**Eligible Lender** means a Lender that meets the requirements of Part II herein.

**Eligible Mortgage Loan** means a Mortgage Loan that meets all of the terms and conditions of all Participation Documents.

**Eligible Servicer** means a mortgage loan Servicer that meets the requirements of Part II herein.

**Eligible Residence** means a Residence that meets the requirements specified in Part V of the Selling Supplement.

**Escrow Payment** means, with respect to a Residence securing a Mortgage Loan, all moneys collected to obtain or maintain mortgage insurance and fire, flood and other hazard insurance, and any payments required to be made to any governmental body or political subdivision or district for taxes or other assessments.

**Existing Housing** means a Residence which has been previously occupied as a dwelling prior to the execution of the real estate purchase contract related to the individual Mortgage Loan transaction.

**FDIC** means the Federal Deposit Insurance Corporation.

**Federal** means of or related to the government of the United States of America.

**Federal Tax Return** means:

- A. True, complete and correct signed copies of the Applicant's Federal income tax returns filed with the IRS, or
- B. Correspondence from the IRS (such as IRS Letter 1722 or an IRS generated computer printout) which states:
  - 1. The Applicant filed either of Federal Forms 1040-A or 1040-EZ with the IRS, or
  - 2. The Applicant filed Form 1040 with the IRS, but did not itemize any deductions for property taxes or mortgage interest.

**Federally Guaranteed** means the guarantee of a Mortgage Loan pursuant to the Servicemen's Readjustment Act, as the same may be amended from time to time ("VA Guaranteed") or the guarantee of a Mortgage Loan pursuant to the provisions of the Rural Housing Service ("RHS") (formerly known as the Farmers Home Loan Administration or FmHA).

**Federally Insured or FHA Insured** means insured by FHA under its Section 203(b), 203(k), 221(d)(2) or 234(c) insurance programs.

**FHA** means the Federal Housing Administration of the Department of Housing and Urban Development of the United States of America.

**FHLMC or Freddie Mac** means the Federal Home Loan Mortgage Corporation.

**FmHA** see "RHS"

**Final Mortgage Delivery Date** means the date so designated in a Mortgage Purchase Agreement, which is the final date on which such Mortgage Loan may be delivered for sale to the Agency.

**First Time Home Buyer** means a Borrower who has had no present ownership interest in a principal residence (including without limitation any Manufactured Housing or a Mobile Home which is permanently affixed to real property) at any time during the three year period prior to the date of execution of the Mortgage. Interests which constitute present ownership interests include, but are not limited to, the following: a fee simple interest, a joint tenancy, a tenancy in common, a tenancy by the entirety, the interest of a tenant shareholder in a cooperative, a life estate, a land contract (i.e., a contract pursuant to which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time), and an interest held in trust for the Borrower (whether or not created by the Borrower) that would constitute a present ownership interest if held directly by the Borrower.

**FNMA or Fannie Mae** means the Federal National Mortgage Association.

**Foreclosure Counsel** means an attorney or firm of attorneys appointed by the Agency to represent it in matters involving foreclosure of a Mortgage Loan, the acceptance of a deed-in-lieu of foreclosure, a bankruptcy or the acceleration of all payments of a Mortgage Loan. A list of Foreclosure Counsel is specified in an Exhibit within the Servicing Supplement, which Exhibit may be amended by the Agency from time to time.

**General Resolution** means the applicable General Bond Resolution and Series Resolution adopted by the Agency with respect to the Bonds that are issued in order to purchase a Mortgage Loan.

**Gross Income** is the sum of all income not excluded in the following paragraph (before any payroll deductions), including but not limited to gross pay, net income from business or self-employment, any additional income from overtime, part time employment, shift differential, bonuses, allowances for automobiles, housing, uniforms, etc. (except that employee business expenses may be deducted), dividends, interest, royalties, pensions, compensation from the Department of Veterans Affairs (VA), net rental income, net farm income, etc.; and other income (such as alimony, child support, reimbursement for child care expenses, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments). Overtime pay and bonuses must be projected for the Current Year in an amount consistent with the earnings history of each Household member.

Gross Income shall not include casual, sporadic or irregular gifts; amounts that are specifically for or in reimbursement of medical expenses; inheritances; insurance payments (including payments under health and accident insurance and workmen's compensation other than payments in lieu of earnings); reimbursements received under an employer's flexible benefit plan or cafeteria plan; settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purpose; special pay to a serviceman who is exposed to hostile fire; foster child care payments; and the income of any Household member who is under 18 years of age or a full-time student (provided that no deduction shall be allowed for a person who executes the Mortgage, the head of the Household, the spouse of the head of the Household or a person who is secondarily liable on the Mortgage Loan).

Gross Income may not be reduced by any losses incurred by Borrower except those reflected on IRS Schedule C, E or F. Depreciation expenses may not be taken unless calculated on a straight line basis on applicable IRS Schedules and Forms and applicable profit and loss statements. All other depreciation expenses must be added back to net business, farm or self-employment income shown on IRS Schedule C, E or F.

**Guide** means the Agency's Single Family Mortgage Purchase Program Selling Guide to Mortgage Purchase Agreement, Servicing Guide to Mortgage Purchase Agreement, and Accounting and Reporting Guide to Mortgage Purchase Agreement, each of which have been superseded and replaced by this Agreement.

**Household** means all persons expected to use the Residence as their Principal Residence during the Current Year, excluding children expected to be born following Closing. In a case when a child is the subject of a joint custody order of a court, the child may be considered a member of the Household provided that more than 50% of the child's time will be spent as a member of the Household.

**HUD** means the Department of Housing and Urban Development of the United States of America.

**Income Limits** means the Income Limits established and amended by the Agency from time to time pursuant to the Rules, but in no event in amounts greater than the Income Limits permitted by Section 143(f) of the Code. The Current Annual Household Income of the Borrower may not exceed the Income Limits established by the Agency from time to time as set forth in the applicable Notice of Availability of Funds.

**Incomplete Mortgage** means a Mortgage Loan for which the Mortgage Submission Package, as described in Part IV of the Selling Supplement, does not contain each and every document or all information required by the Agency or which documents are not in the order required by the Agency.

**Invitation to Participate** means a document utilized under the Program from 1977 through early 1987 that invited Eligible Lenders to submit an Application Agreement to the Agency requesting a Commitment of Program funds in an amount the Eligible Lender would agree to originate in Eligible Mortgage Loans for sale to the Agency. The Invitation to Participate and Application Agreement were incorporated into Mortgage Purchase Agreements and were superseded by documents entitled Notice of Availability of Funds and Commitment Procedures.

**IRS** means the Internal Revenue Service of the United States Department of the Treasury.

**Leasehold** means the right and obligation of a tenant under a written lease to occupy, use, maintain and improve the leased premises in the manner specified in the written lease.

**Lender or Mortgage Lender** means the bank, trust company, savings and loan association, credit union, mortgage bank or other financial institution which is the Lender under the Mortgage Purchase Agreement incorporated herein by reference.

**Low and Moderate Income Persons** means persons irrespective of race, religion, creed, disability, national origin or sex, determined by the Agency from time to time to require such assistance as is made available by the Act on account of insufficient personal or family income, in accordance with 9-4-903(9) of the Act.

**Manufactured Housing** means a transportable factory-built dwelling manufactured on or after June 15, 1976, in accordance with the National Manufactured Housing and Safety Standards Act of 1974, which dwelling:

- A. Is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation;
- B. Bears the required HUD insignia affixed at the factory to the dwelling's exterior, certifying compliance with all applicable HUD standards;

- C. Is affixed to a permanent site-built foundation which foundation meets the requirements of the Uniform Building Code as defined in the Utah Code;
- D. Shall have had the procedures performed, as required by Section 59-2-602 of the Utah Code, in order for the dwelling to have achieved the status of an improvement to real property;
- E. Is sited for the first and only time at the secured property;
- F. Has an integrated roof with a minimum of pitch ratio of 2.5:12;
- G. Has a front roof overhang of 6 inches or more (including rain gutters);
- H. Has a roof covering of wood shakes; wood, asphalt, or fiberglass composition shingles; concrete or metal tiles; slate; or built up gravel;
- I. Has an exterior width of at least 20 feet at the narrowest point of the first story, not including the width of the roof or an attached garage; and
- J. Has had all running gear, tongues, axles, wheels, or other transportation equipment permanently removed.

**Master Servicer** means the Servicer contractually responsible to the Agency to service a Mortgage Loan in a Subservicing arrangement.

**Mobile Home** means a transportable factory-built dwelling manufactured prior to June 15, 1976, in accordance with codes existing prior to the National Manufactured Housing and Safety Standards of 1974. A Mobile Home is not Manufactured Housing.

**Modular Housing** means a dwelling, built from sections, which are manufactured and transported to the building site where the sections are assembled to make a complete residence.

**Mortgage** or **Trust Deed** means a deed of trust securing a Mortgage Loan and constituting a first lien on real property (such property held in fee simple by the Borrower) improved by a Residence.

**Mortgage Lender** see “Lender”

**Mortgage Loan** or **Senior Mortgage Loan** means a loan of a specified sum of money made by a Lender to an eligible Borrower to finance a Residence, and evidenced by a Mortgage Note and secured by a related Mortgage. Such term does not include a Subordinate Mortgage Loan.

**Mortgage Note** or **Note** means the instrument evidencing the obligation to repay a loan of a specified sum of money.

**Mortgage Pool Insurance Policy** means a mortgage pool insurance policy or policies, or any replacement policy or policies obtained by the Agency from a Private Mortgage Insurer.

**Mortgage Purchase Agreement** means a mortgage purchase agreement between the Agency and a Lender in the form approved by the Agency from time to time.

**Mortgage Submission Voucher** means a statement in such form as the Agency shall determine is necessary to supply the requisite information to enable the Agency to purchase a Mortgage Loan.

**Mortgaged Premises** means the land, access, easements, Residence, and all improvements including utility connections and rights to water or water stock that are the subject of a Mortgage.

**Mortgagor** see “Borrower”

**NCUA** means the National Credit Union Administration.

**New Construction** means a Residence not previously occupied as a dwelling prior to the execution of the real estate purchase contract related to the individual Mortgage Loan transaction.

**Notice of Availability of Funds** means the document addressed to Lenders and distributed by the Agency inviting Eligible Lenders to participate in the origination and sale of Eligible Mortgage Loans to the Agency and setting forth certain terms pertaining to the proposed origination and sales of such Mortgage Loans.

**Participation Documents** means this Participation Agreement, Mortgage Purchase Agreement, Notice of Availability of Funds, Selling Supplement, Servicing Supplement, Accounting and Reporting Supplement and all other documents incorporated into this Agreement.

**Planned Unit Development (PUD) Project** means a residential real estate project whereby two or more dwelling units are separately offered or proposed to be offered for sale, and wherein common areas and facilities exist, as evidenced by an instrument of record, which instrument established an association or organization of members which owns or maintains the common areas.

**Planned Unit Development (PUD) Unit** means a Residence, as defined herein, which is a physical part of a PUD Project, the owner of which unit has the right of use of the PUD-Project’s common areas or facilities by access or easement.

**Principal Residence** means the dwelling of an individual for a minimum of 51% of the number of days in a calendar year.

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

**Private Mortgage Insurer** or **PMI** means a private insurance company which provides or may have provided a Private Mortgage Insurance Policy or which provides or may have provided a Mortgage Pool Insurance Policy with respect to one or more Mortgage Loans.

**Privately Insured** means insured under an individual primary mortgage insurance policy issued in an amount specified by the Agency by a Qualified PMI, and if applicable, such Mortgage also being approved for coverage by the issuer of a Mortgage Pool Insurance Policy issued to the Agency.

**Program** means the UHFA Single Family Mortgage Program that includes FirstHome, CHAMP, Single Parent Set-Aside - FirstHome, and Single Parent Set-Aside - CHAMP, as more particularly described in the Rules.

**Qualified PMI** means any Private Mortgage Insurer acceptable to the Agency, qualified to do business in the State, qualified to provide insurance on mortgages purchased by Fannie Mae or Freddie Mac, and recognized by two nationally recognized securities rating services as being sufficiently creditworthy so that the credit rating of securities secured by a pool of single-family mortgages insured by such Private Mortgage Insurer are rated in one of the two highest ratings of a nationally recognized rating service acceptable to the Agency.

**Regulations** means all regulations and temporary regulations promulgated by the United States Treasury Department or Internal Revenue Service with respect to Sections 103, 143 and 148 of the Code or with respect to similar sections of the prior code.

**Rehabilitation** means the repairs, improvements and construction contemplated for a Residence to be financed from the proceeds of a Mortgage Loan insured by FHA under its 203(k) program.

**Residence** means the dwelling purchased with the proceeds of an Mortgage Loan, which Residence is the Mortgaged Premises as defined herein and which must be an Eligible Residence as described and defined in Part V of the Selling Supplement.

**RHS** means the Rural Housing Service, of the United States Department of Agriculture, formerly known as the Farmers Home Administration or FmHA.

**Rules** means the rules adopted by the Agency pursuant to the Act governing the activities authorized by the Act to carry into effect the powers and purposes of the Agency and the conduct of its business, as the same may be amended from time to time.

**Selling Obligations** means the obligations, duties and responsibilities that are required of a Lender in the Participation Documents, as well as those that are required of a Lender under any Federal, State or local rule or regulation or by any agreement or contract of mortgage insurance or guaranty, and those typical obligations, duties and responsibilities that are in conformance with sound banking and mortgage lending practices.

**Selling Supplement** means the Single Family Mortgage Program Selling Supplement to Participation Agreement, as amended, which is incorporated by reference.

**Senior Mortgage Loan** see “Mortgage Loan”

**Servicer** means any entity who is performing or who has performed the Servicing Obligations for Agency Mortgage Loans, whether or not such entity is an Eligible Servicer or has been approved by the Agency.

**Servicing Obligations** means the obligations, duties and responsibilities of a Servicer that are required in the Participation Documents, as well as those that are required of a mortgage loan Servicer under any Federal, State or local rule or regulation or by any agreement or contract of mortgage insurance or guaranty, and those typical obligations, duties and responsibilities that are in conformance with sound banking and mortgage lending practices.

**Servicing Supplement** means the Single Family Mortgage Program Servicing Supplement to Participation Agreement, as amended, which is incorporated by reference herein.

**Servicing Released** means, with respect to the sale of a Mortgage Loan, the sale of the Servicing Rights to the Agency, for which the Agency pays the Lender reasonable consideration.

**Servicing Rights** means the right to service Mortgage Loans owned by the Agency, including the consideration received for performing the Servicing Obligations described in the Participation Documents.

**Settlement** means the date upon which title to the secured property is transferred by the Borrower to another person or entity.

**Standard Hazard Insurance Policy** means a standard hazard insurance policy or any replacement policy, to be maintained for each Mortgage Loan pursuant to the Participation Documents.

**State** means the State of Utah.

**Subordinate Mortgage Loan** means a mortgage loan having the characteristics described in Part II of the Selling Supplement.

**Subservicer** means an Eligible Servicer other than a Master Servicer that performs servicing functions on behalf of, and under the direction of, a Master Servicer.

**Supplement** means the Selling Supplement, Servicing Supplement and Accounting and Reporting Supplement.

**Targeted Area** means any area within the State that constitutes a targeted area within the meaning of Section 143 of the Code.

**Trust Indenture** means the applicable Trust Indenture executed by the Agency with respect to one or more series of Bonds.

**UHFA** means the Agency.

**Utah Code** means the Utah Code Annotated 1953, as amended, from time to time.

**VA** means the Department of Veterans' Affairs of the United States of America.

**Yield on the Bonds** means the yield thereon as determined by the Agency in accordance with the applicable provisions of Sections 143 and 148 of the Code.

Except for words and phrases which are defined herein, and unless the context clearly indicates another definition, words and phrases used herein shall have the same meanings as such words and phrases in the applicable General Resolution or Trust Indenture of the Agency.