

**MINNESOTA HOUSING FINANCE AGENCY**

**PARTICIPATION AGREEMENT  
FOR  
MINNESOTA HOUSING SINGLE FAMILY  
MORTGAGE BACKED SECURITIES  
MORTGAGE REVENUE BOND PROGRAMS**

THIS PARTICIPATION AGREEMENT is made and entered into by and between

\_\_\_\_\_  
(the "Lender"), with its office located at \_\_\_\_\_;  
\_\_\_\_\_; the Minnesota Housing Finance Agency ("Minnesota Housing"), with its office located at 400 Sibley Street - Suite 300, St. Paul, Minnesota 55101-1998; and U.S. Bank, National Association, d/b/a U.S. Bank Home Mortgage – MRBP Division, with its principal office located at 17500 Rockside Road, Bedford, Ohio 44146-2099 (with any other entity appointed as servicer by Minnesota Housing, the "Servicer").

RECITALS:

- A. Minnesota Housing, under the provisions of Minnesota Statutes, Chapter 462A, as amended from time to time, is authorized to finance the purchase of mortgage notes and mortgages (collectively, "Mortgage Loans") for residential housing to be occupied by individuals and families meeting Minnesota Housing's loan eligibility requirements.
- B. Minnesota Housing intends to issue mortgage revenue bonds from time to time (the "Bonds"), the proceeds of which will be used to fund various Minnesota Housing Single Family Mortgage Revenue Bond Programs including, but not limited to the Minnesota Mortgage Program ("MMP"), the Community Activity Set Aside Program and the Minnesota City Participation Program (collectively, the "Programs").
- C. The Servicer will acquire Mortgage Loans to be funded by the Programs and pool the Mortgage Loans into mortgage-backed securities, which will be acquired by Minnesota Housing with proceeds of the Bonds or other funds of Minnesota Housing.
- D. The Lender wishes to participate in one or more of the Programs.
- E. Minnesota Housing and the Servicer are willing to enter into this Participation Agreement (this "Participation Agreement") to allow the Lender to participate

in the Programs, in accordance with the terms and conditions set forth below and the provisions contained in the Minnesota Housing Mortgage Program Procedural Manual (as it may be amended or supplemented from time to time by Minnesota Housing, the "Manual"), and the U.S. Bank MRBP Lending Manual, as it may be amended or supplemented from time to time by the Servicer (the "Servicer Guide"), the provisions of each of which are hereby incorporated by reference herein as if set forth in their entirety.

**NOW, THEREFORE, the parties agree as follows:**

- 1. Participation Under MMP.** In accordance with the terms and conditions herein and those contained in the Manual and the Servicer Guide, the Lender agrees to participate in the MMP and, subject to the terms, conditions and requirements contained in the Manual and the Servicer Guide, the Servicer agrees to purchase qualified Mortgage Loans from the Lender. The Lender understands and agrees that this Participation Agreement does not reserve or commit any monies to the Lender for the purchase of any loans under the MMP.
- 2. MMP Participation Term.** The Lender understands that participation in the MMP under this Participation Agreement shall be permitted only after this Participation Agreement is effective which occurs once (i) the Lender submits an executed copy of this Participation Agreement together with the required Participation Fee to Minnesota Housing, (ii) Minnesota Housing and the Servicer have each executed this Participation Agreement, and (iii) Minnesota Housing returns a fully executed copy of this Participation Agreement to the Lender. After this Participation Agreement is effective, the Lender may begin making Mortgage Loans provided the Lender fully complies with the terms of this Participation Agreement, the Manual and the Servicer Guide. The Lender's participation in the MMP will terminate (i) upon the termination of MMP by Minnesota Housing, or (ii) upon the termination of this Participation Agreement as authorized in the Manual, or (iii) failure of the Lender to remit the required renewal fee. The Lender agrees to notify Minnesota Housing and the Servicer in writing if it wishes to terminate its participation in the MMP. Initially, the Lender is entitled to participate in the MMP for a time period to be established by Minnesota Housing, in its discretion; provided, however, such initial time period shall be a minimum of ten months. The length of any renewal time period shall be set by Minnesota Housing, at its discretion; provided, however, such renewal time period shall be a minimum of ten months.
- 3. Participation Under Other Programs.** If the Lender wishes to participate in Programs other than MMP, the Lender must submit the required applications and receive the necessary approvals. If approved, the Lender

understands and agrees that (i) this Participation Agreement shall also apply to, and govern, the Lender's participation in those other Programs, and (ii) the Manual and the Servicer Guide contain requirements applicable to those other Programs.

- 4. Term of Participation in Other Programs.** The Lender understands that participation in Programs other than the MMP under this Participation Agreement shall be effective only after the Lender receives the necessary Minnesota Housing approval in writing and complies with all other requirements. The Lender's participation in another Program will terminate upon (i) termination of the Program, or (ii) termination of this Participation Agreement as provided in the Manual, or (iii) failure of the Lender to remit the renewal fee required under this Participation Agreement. The Lender agrees to notify Minnesota Housing and the Servicer in writing if it wishes to terminate its participation in a specific Program.
- 5. Original and Renewal Fees.** The Lender shall pay the following amounts to participate in the Programs:
  - a) Unless waived or modified in writing by Minnesota Housing, the Lender agrees to transmit to Minnesota Housing, along with and at the same time as delivery of an executed copy of this Participation Agreement, the required nonrefundable participation fee.
  - b) Prior to the expiration of any time period during which the Lender is eligible to participate in one or more Programs, Minnesota Housing shall notify the Lender in writing of the amount of a renewal fee which the Lender must pay to Minnesota Housing in order for the Lender to continue participating in the Programs.
- 6. Purchase Procedure.** The Lender shall submit Mortgage Loans to the Servicer for purchase in strict accordance with the provisions and procedures specified in the Manual and the Servicer Guide.
- 7. Commitment Term.** The Servicer's commitment to purchase qualified Mortgage Loans from the Lender shall begin on the date specified in the Manual, and continue for the period and in the manner specified in the Manual.
- 8. Sale of Mortgage Loans; Purchase Price of Mortgage Loans; Assignment of Insurance.** The Lender shall sell and assign each Mortgage Loan, with servicing released, to the Servicer upon approval of the Mortgage Loan by the Servicer and the Agency, and the Servicer shall pay to the Lender the purchase price of the Mortgage Loan. The purchase price of each Mortgage Loan to be paid by the Servicer hereunder shall be as set forth in the Manual and the Servicer Guide. The Lender assigns and sets over to the

Servicer as of the purchase date of each Mortgage Loan, all of its right, title and interest in and to such policies or contracts of insurance and any insurance benefits that it has received or may receive on the Mortgage Loan.

- 9. Mortgage Loan Terms.** The amortization period and annual interest rate on each Mortgage Loan to be purchased by the Servicer hereunder shall be as set forth from time to time in the Manual, or such other notice as may be prescribed in the Manual.
- 10. Lender's Warranties and Representations.** The Lender's warranties, as set forth in the Manual and the Servicer Guide, shall be applicable to each and every Mortgage Loan sold to the Servicer by the Lender and shall run in favor of Minnesota Housing and the Servicer. In addition, the Lender hereby represents that all information it has provided or will provide to Minnesota Housing or the Servicer in an application to participate in one or more of the Programs, in any other Program document or at the request of Minnesota Housing or the Servicer is or will be true and complete in all material respects as of the date made.
- 11. Servicing.** Upon sale of a Mortgage Loan, servicing released to the Servicer, the servicing of each Mortgage Loan purchased by the Servicer shall be the sole responsibility of the Servicer, or of those servicing institutions that Minnesota Housing may designate, in its sole discretion, subject to any contractual provisions between Minnesota Housing and the Servicer.
- 12. Remedies; Repurchase Obligation.** In the event that the Lender fails to observe or perform any covenant or condition in this Participation Agreement, the Manual, or the Servicer Guide, or in the event that any warranty or representation made by the Lender is determined by Minnesota Housing or the Servicer to be untrue, then Minnesota Housing or the Servicer or both shall be entitled to all remedies, at law or in equity, including but not limited to: (i) the right to tender Mortgage Loans to the Lender for repurchase as set forth in the Manual, the Servicer Guide and in this Section 12; (ii) the right to rescind acceptance of this Participation Agreement; (iii) the right to seek equitable relief by way of injunction (mandatory or prohibitory) to prevent the breach or threatened breach of any of the provisions of this Participation Agreement, or to enforce the performance thereof; (iv) the right to seek damages, including consequential damages, arising by virtue of Minnesota Housing's sale of its debt securities in reliance on the Lender's performance of the provisions of this Participation Agreement, and (v) the right to terminate this Participation Agreement; provided, however, that such termination shall not diminish the rights of Minnesota Housing or the Servicer specified herein or in the Manual or the Servicer Guide. All such remedies shall be cumulative, and the exercise by Minnesota Housing or the Servicer of any one or more of them shall not in anyway alter or diminish the right of

Minnesota Housing or the Servicer to any other remedy. The Lender acknowledges that Minnesota Housing or the Servicer may not become aware of a default hereunder by the Lender until a substantial period of time after such default has occurred and any related Mortgage Loans have been submitted to and purchased by the Servicer, and the Lender agrees that any such delay shall not be grounds for a claim of laches.

The Lender hereby agrees to repurchase any Mortgage Loan sold to the Servicer pursuant to this Participation Agreement, at any time during the life of such Mortgage Loan, upon the occurrence of any of the following events:

(a) The Servicer has evidence of any violations of any rule, regulation, or requirement of Minnesota Housing, the Servicer or of any of the following: the Federal Housing Administration ("FHA"), Veterans Administration ("VA"), Rural Housing ("RHS"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Federal National Mortgage Association ("Fannie Mae"), the Government National Mortgage Association ("GNMA") or any other purchaser or guarantor of Mortgage Loans.

(b) Any false statement, misstatement, or act or omission of material fact contained in the Mortgage Loan documentation resulting from the Lender's negligence or failure to exercise due diligence as disclosed by actual inspection by the Servicer or its representative, or otherwise disclosed.

(c) The Lender fails to obtain FHA insurance, a VA guaranty or Rural Development guaranty or appropriate private mortgage insurance, or if such insurance or guaranty lapses or for any reason becomes unavailable, as a result of any negligent act or omission by the Lender, or the failure by the Lender to obtain such insurance or guaranty within 90 days from the date of purchase.

(d) The Servicer is required to repurchase any Mortgage Loan sold or pledged by it to GNMA, Fannie Mae, Freddie Mac or any other purchaser or guarantor, by reason of the Lender's negligence or failure to exercise due diligence or a deficiency in or omission with respect to the documents, instruments, and agreements, pertaining to any Mortgage Loan.

(e) The Servicer has evidence that any representation or warranty made by the Lender under this Participation Agreement with respect to any Mortgage Loan is, in whole or in part and with or without knowledge of the Lender, false at the time when made by the Lender or becomes false upon the occurrence of subsequent events.

(f) Any material fraud, misrepresentation or act or omission with respect to the information submitted on a particular Mortgage Loan is determined to exist by the Servicer, Minnesota Housing, FHA, VA, RHS, Freddie Mac, Fannie Mae, GNMA or any other purchaser or guarantor of the Mortgage Loan. This includes, but is not limited to, mortgagor or other third party fraud or misrepresentation, and any misrepresentation of the mortgagor's income, funds on deposit, or employment, or of the occupancy status of the mortgaged residence.

(g) The Lender's breach of any covenant or obligation to the Servicer with respect to the Mortgage Loan under this Participation Agreement, the Servicer Guide or the Manual.

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

- 13. Refund of Servicing Release Premiums.** If any Mortgage Loan is prepaid in full within three months following the date of purchase by the Servicer, from the Lender, the Lender shall refund to the Servicer all service release premiums received from the Servicer with respect to that Mortgage Loan. If any Mortgage Loan, underwritten by the Lender, becomes delinquent for any of the first three scheduled monthly payments due the Servicer, and is not brought current by the borrower within 90 days of delinquency, the Lender shall refund to the Servicer all service release premiums received from the Servicer with respect to that Mortgage Loan plus an additional fee of \$1,000 on Conventional loans and \$3,000 on Government loans (FHA, VA and RD).
- 14. Contract Documents.** All transactions between the Lender, the Servicer and Minnesota Housing pursuant to this Participation Agreement are on a contractual basis, the contract in each instance consisting of: (i) this Participation Agreement, (ii) the provisions and requirements of the Manual and the Servicer Guide, with all amendments and supplements thereto, and (iii) any applicable servicing agreement.

- 15. HDS Security.** The Lender represents and warrants that it has the facilities, personnel and the capability to administer mortgage loan origination, application and qualification with respect to Mortgage Loans made pursuant to the Minnesota Housing HDS SF Web Application ("HDS"). The Lender further represents and warrants that is currently has, or will have, and will maintain the necessary internet connection to the World Wide Web and such other facilities and equipment as necessary to fulfill its obligations under this Participation Agreement. The Lender agrees to safeguard and maintain the security of all facilities, passwords, access codes, firewalls and other equipment and features that limit or provide access to the HDS and data, files and documents contained therein by following Minnesota Housing policies, procedures and directives relating thereto including, but not limited to, providing access only to those employees necessary to have such access and training those employees in the appropriate security measures and procedures. The Lender agrees to designate an HDS Administrator. The HDS Administrator shall maintain HDS system privileges to all users within the Lender's organization including all user login names, passwords, and branch information. Additionally, the HDS Administrator will be the first point of contact within the Lender's organization regarding access or login questions, and is responsible to receive all Minnesota Housing communications regarding Programs. If the Lender finds it necessary to designate a new HDS Administrator, the Lender shall submit the request in strict accordance with the provisions and procedures specified in the Manual.
- 16. Indemnification.** The Lender shall protect, indemnify, and hold harmless the Servicer and Minnesota Housing and their respective members, officers, employees and agents (the "Indemnified Parties") from, and in respect of, any and all losses, liabilities, reasonable costs, and expenses (including attorneys' fees) that may be incurred by the Indemnified Parties with respect to, or proximately resulting from, any breach of, any representation, warranty, or covenant of the Lender hereunder. The Servicer and Minnesota Housing shall be entitled to rely upon the Lender as assembler and preparer of all Mortgage Loan documents and are under no duty whatsoever to investigate or confirm any of the information set forth therein as to its honesty, accuracy, or completeness. The Lender hereby further agrees to indemnify and hold harmless the Indemnified Parties from any claim, loss or other damage, including reasonable attorneys' fees, resulting in whole or in part from any inaccuracy or incompleteness in the Mortgage Loan documents or any act or omission by the Lender, its agents and employees, including but not limited to failure to comply with applicable state, federal and local statutes or regulations. To the extent the Lender, its agents or employees, commits an actual wrong, or makes some error or omission in the preparation of any Mortgage Loan or its documents and as a result thereof, and based thereon, any Indemnified Party commits an act or omission for

which it becomes liable to the Mortgagor(s) or any third party and/or a claim or cause of action is instituted against an Indemnified Party, the Lender hereby further agrees to indemnify and hold harmless the Indemnified Parties from any such loss or damage, including reasonable attorneys' fees, resulting therefrom.

**17. Notices.** All notices required or authorized to be sent to the parties to this Participation Agreement, shall be addressed as follows:

To the Lender:

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To Minnesota Housing:

Minnesota Housing Finance Agency  
Attn: MN Homes Division Mortgage Programs  
400 Sibley Street, Suite 300  
Saint Paul, MN 55101-1998

To the Servicer:

U.S. Bank Home Mortgage – MRBP Division  
17500 Rockside Road  
Bedford, Ohio 44146-2099  
Attention: Client Support Executive and Account Executive

**18. Publicity.** Any publicity given to the Programs and all publications, advertising, or services provided in accordance with this Participation Agreement, including, but not limited to, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Lender or its employees individually or jointly with others, or any subcontractors shall clearly and expressly identify Minnesota Housing as the funding source.

**19. Affirmative Action Requirements.** The Lender hereby certifies that it is in full compliance with the affirmative action requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. The Lender acknowledges that such consequences for the Lender's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner of Human Rights ("Commissioner"), refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Participation Agreement by the Commissioner or Minnesota Housing.

- 20. Waiver.** Neither the failure by any party hereto in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of any party hereto to exercise any right, privilege, or remedy conferred hereunder or afforded by law, shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege or remedy thereafter.
- 21. Governing Law and Venue.** This Participation Agreement is made and entered into in the State of Minnesota, and shall be construed and interpreted in accordance with the laws of such state (without giving effect to conflicts-of-laws principles thereof). The parties agree and consent that any litigation that may be initiated with respect to any action arising under by this Participation Agreement shall be initiated and venued, through completion thereof, in the State District Court in and for the County of Ramsey, State of Minnesota.
- 22. Severability.** If any term or provision of this Participation Agreement is finally judged by any court of competent jurisdiction to be invalid or unenforceable, the remaining terms and provisions contained herein shall remain in full force and effect, and they shall be interpreted, performed, and enforced as if said invalid provision did not appear herein.
- 23. Successors and Assigns.** This Participation Agreement may not be assigned, in whole or in part, by the Lender without the written consent of Minnesota Housing and the Servicer. In addition, this Participation Agreement shall fully bind and inure to all permitted successors or assigns of any party hereto as if it had been originally executed by such successor and/or assign.
- 24. Prior Participation Agreements.** The Lender and Minnesota Housing mutually agree that this Participation Agreement is not intended to replace any existing Participation Agreement between them, which will continue to have applicability to Mortgage Loans, if any, purchased by the Agency (instead of the Servicer) under the Program. Minnesota Housing agrees that a single renewal fee will be sufficient to extend the term of this Participation Agreement as well as any prior Participation Agreement, subject to the terms hereof and thereof, respectively.

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IN WITNESS WHEREOF, each party has caused this Participation Agreement to be executed by its duly authorized officer or officers.

**LENDER**

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Printed or Typewritten Name of Authorized Officer)

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

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

(Include Additional Signature Below if Required by the Lender's Bylaws)

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

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

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

**MINNESOTA HOUSING FINANCE AGENCY**

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

Its: Assistant Commissioner

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

**U.S. BANK, NATIONAL ASSOCIATION,  
d/b/a U.S. Bank Home Mortgage – MRBP Division**

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

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

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