

**CITY AND COUNTY OF DENVER, COLORADO
METRODPA PROGRAM
PROGRAM MONITORING AGREEMENT**

THIS PROGRAM MONITORING AGREEMENT (this “Agreement”) is entered into as of [_____ 1, 2019], by and between the **CITY AND COUNTY OF DENVER, COLORADO** (the “City”) and [_____] or its successor in interest (the “Program Monitor”) in connection with the City’s metroDPA Program (the “Program”).

WITNESSETH:

WHEREAS, capitalized terms used but not otherwise defined in these preambles shall have the meanings set forth in Section 1 hereof; and

WHEREAS, in connection with the Program, the City has entered into the Professional Services Agreement, Assignment Agreement, Escrow Agreement, Lender Agreement, Servicing Agreement Lakeview and Servicing Agreement Wholesale pursuant to which the Program is being administered and the City has undertaken to perform certain responsibilities; and

WHEREAS, the City desires to have the Program and the Program Documents monitored and the Program Monitor agrees to monitor the Program and the Program Documents on behalf of the City pursuant to the terms of this Agreement;

NOW, THEREFORE, in consideration of the undertakings, terms and conditions set forth herein, the parties mutually agree as follows:

Section 1. Definitions. All words and phrases defined in this Section 1 (except as expressly provided otherwise herein or unless the context otherwise requires) shall have the respective meanings specified in this Section 1 for all purposes of this Agreement. All terms used but not otherwise defined in this Agreement shall have the meanings set forth in the Purchase Agreement.

“*Administrator*” means George K. Baum & Company or its successors in interest.

“*Assignment Agreement*” means the Master Absolute Assignment Agreement, dated [_____, 2019], by and among the City, as assignor, and GKB Mortgage Assets LLC, as assignee.

“*Bank*” means [_____] or its successor in interest.

“*Escrow Agent*” means [_____] or its successors in interest.

“*Escrow Agreement*” means the Escrow Agreement, dated as of [_____ 1, 2019], by and between the City and [Escrow Agent].

“*Lender Agreement*” means the Program Lender Agreement, by and between the City and each lender under the Program.

“*Professional Services Agreement*” means the Professional Services Agreement, dated as of [_____ 1, 2019], by and between the City and Administrator.

“*Program Guidelines*” means the Program Guidelines established in connection with the Program and the Professional Services Agreement.

“*Program Documents*” means the Professional Services Agreement, Program Guidelines, Escrow Agreement, Assignment Agreement, Lender Agreement, Servicing Agreement Lakeview and Servicing Agreement Wholesale.

“*Servicer*” means Lakeview Loan Servicing, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware, or any servicer under the Servicing Agreement Wholesale.

“*Servicing Agreement Lakeview*” means the Seller and Servicing Agreement, dated as of [_____ 1, 2019], by and between the City and Lakeview Loan Servicing, LLC, as servicer thereunder, and acknowledged by the Administrator.

“*Servicing Agreement Wholesale*” means the Seller and Servicing Agreement, dated as of [_____ 1, 2019], by and between the City and any servicer thereunder.

Section 2. Duties of Program Monitor. The Program Monitor hereby acknowledges its receipt of the Program Documents. The Program Monitor hereby covenants and agrees to perform the following duties with respect to monitoring the Program:

- (a) Perform such actions and duties as specified in **Exhibit A** attached hereto.
- (b) Subsequent to execution of Program Documents:
 - (i) review mortgage rates published and provided by the Administrator to the Program Monitor and notify the City of out-of-market mortgage rates, or mortgage rates that fail to conform with the Program Documents, and to the extent possible, the failure to adjust mortgage rates on a timely basis following significant movements in the mortgage backed securities market; and
 - (ii) match deliveries of mortgage backed securities to Mortgage Loans purchased from the Servicer and confirm appropriate flow of funds per the terms of the Program Documents, and review closing letter/schedule of Mortgage Loans to be purchased.
 - (iii) The Program Monitor agrees to provide the City notification of items (b)(i) and (b)(ii) above by the [_____ (____)] of each month, or the next business day if [_____ (____)] is not a business day, following the end of each month.
- (c) The duties of the Program Monitor set forth in this Section and the fees therefor may be revised at any time upon written agreement of the Chief Financial

Officer of the City or, in the absence of the Chief Financial Officer of the City, by the Executive Director of the Office of Economic Development of the City and the Program Monitor.

Section 3. Fees of Program Monitor. The City agrees to pay the fees of the Program Monitor, which fees are an ongoing fee of [_____].

Section 4. Annual Appropriation. It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the City Council of the City for the purpose of this Agreement, encumbered for the purpose of this Agreement and paid into the treasury of the City. The Program Monitor acknowledges that: (i) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City within the meaning of any constitutional or statutory debt limitations or restriction.

Section 5. Notices. All notices, instructions, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of service if delivered personally to the party to whom notice is to be given; (b) on the day of transmission if sent by email to the email address, respectively, given below, and written confirmation of receipt is obtained promptly after completion of transmission; (c) on the day after delivery via Federal Express or similar overnight courier service or the Express Mail service maintained by the United States Postal Service; or (d) on the fifth (5th) day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed, return receipt requested, to the party as follows:

If to the City:

City and County of Denver, Colorado
Attn: Chief Financial Officer
Department of Finance
201 West Colfax Avenue
Department 1010
Denver, CO 80202
E-mail: Andrew.Johnston@denvergov.org

with copies to: Office of Economic Development
Attn: Executive Director
201 West Colfax Avenue
Department 1011
Denver, CO 80202
E-mail: douglas.selbee@denvergov.org

Denver City Attorney's Office
Attn: City Attorney
1437 Bannock Street
Room 353
Denver, CO 80202
E-mail: JoAnn.Weinstein@denvergov.org

If to the Program Monitor:

[TO BE PROVIDED]

Section 6. Termination. Each of the parties hereto may terminate this Agreement by providing thirty (30) days' written notice to the other party.

Section 7. Amendment. This Agreement shall not be amended or otherwise modified except with the written consent of the parties hereto executed by an authorized representative of the Program Monitor and the Chief Financial Officer of the City or, in the absence of the Chief Financial Officer of the City, by the Executive Director of the Office of Economic Development of the City.

Section 8. Venue and Governing Law. Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

Section 9. Waiver. No rights may be waived except by an instrument of writing signed by the party charged with such waiver. No assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.

Section 10. Professional Liability (Errors And Omissions). Program Monitor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a sever ability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

Section 11. No Discrimination in Employment. In connection with the performance of all work under this Agreement, the Program Monitor agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts entered into in furtherance of this Agreement.

Section 12. Records, Reports, and Inspection.

(a) **Reports and Information.** The Program Monitor shall furnish to the City, or the City's designee, such statements, records, reports, data and information as the City, or the City's designee, may request pertaining to matters covered by this Agreement.

(b) **Audits.** The Program Monitor shall, during normal business hours and as often as the City may deem reasonably necessary, make available to the City, including its auditor, for examination all of its records and data with respect to all matters covered by this Agreement and shall permit the City or its designated or authorized representative to audit and inspect all invoices, materials, payrolls, records of personal conditions of employment and other data relating to all matters covered by this Agreement. Such records shall be maintained for a minimum period of three (3) years following payment or services hereunder.

Section 13. Reasonableness of Consent or Approval. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of any party, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

Section 14. Severability. If one or more provisions of this Agreement, or the applicability of any such provisions for any set of circumstances shall be determined to be invalid or ineffective for any reason, such determination shall not affect the validity and enforceability of the remaining provisions of this Agreement or the applicability of the provisions found to be invalid or ineffective for a specific set of circumstances to other circumstances.

Section 15. Colorado Governmental Immunity Act. The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, Colorado Revised Statutes, as amended.

Section 16. No Employment of Illegal Aliens to Perform Work Under this Agreement. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

The Program Monitor certifies that:

(a) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform services the Escrow Agent is obligated to provide under this Agreement.

(b) It will participate in the E-Verify Program, as defined in Section 8-17.5-101(3.7), Colorado Revised Statutes, as amended, to confirm the employment eligibility of all employees who are newly hired for employment to perform services the Escrow Agent is obligated to provide under this Agreement.

The Program Monitor also agrees that:

(a) It shall not knowingly employ or contract with an illegal alien to perform services the Program Monitor is obligated to provide under the Agreement.

(b) It shall not enter into a contract with a subcontractor to perform services the Program Monitor is obligated to provide under this Agreement that fails to certify to the Program Monitor that it shall not knowingly employ or contract with an illegal alien to perform services the Program Monitor is obligated to provide under this Agreement.

(c) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform services the Program Monitor is obligated to provide under this Agreement, through participation in the E-Verify Program.

(d) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and that the Program Monitor shall comply with any and all federal requirements related to the use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(e) If it obtains actual knowledge that a subcontractor performing services the Program Monitor is obligated to provide under this Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. The Program Monitor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(f) It will comply with any reasonable request made by the Colorado Department of Labor and Employment or the City Auditor, respectively, in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3, respectively.

If the Program Monitor violates any provision of this Section 16, the City may terminate this Agreement. If the Agreement is so terminated, the Program Monitor shall be liable for actual and consequential damages to the City resulting from such violation. Any such

termination of this Agreement may also, at the discretion of the City, constitute grounds for disqualifying the Program Monitor from submitting bids or proposals for future contracts with the City.

Section 17. City Execution of Agreement. This Agreement shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City, as listed in the signature block(s) below.

Section 18. Electronic Signatures and Electronic Records. The parties consent to the use of electronic signatures by each of the parties. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by each of the parties. The parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Section 19. Conflict of Interest.

- A. No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement; and the Program Monitor shall not hire, or contract for services with, any employee or officer of the City in violation of the City's Code of Ethics, D.R.M.C. Sections 2-51, *et seq.* or the Charter Sections 1.2.8, 1.2.9, and 1.2.12.
- B. The Program Monitor shall not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The Program Monitor represents that the Program Monitor has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Program Monitor by placing the Program Monitor's own interests, or the interests of any party with whom the Program Monitor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after the City has given the Program Monitor written notice which describes the conflict.

Section 20. Counterparts. This Agreement may be executed in counterparts by the parties hereto, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City and the Program Monitor have caused this Agreement to be executed by their respective duly authorized officers, all as of the date and year first above written.

CITY:

ATTEST:

CITY AND COUNTY OF DENVER

By: _____
Debra Johnson,
Clerk and Recorder, Ex-Officio Clerk
of the City and County of Denver

By: _____
Michael B. Hancock, MAYOR

APPROVED AS TO FORM:

Kristin M. Bronson
City Attorney for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
City Attorney

By: _____
Brendan J. Hanlon, CFO

By: _____
Timothy O'Brien, Auditor

PROGRAM MONITOR:

[_____]

By _____
Name _____
Title _____

[Signature Page to Program Monitoring Agreement]

EXHIBIT A

PROGRAM MONITORING RESPONSIBILITIES

1. Review of the Program Documents, including Professional Services Agreement, Program Guidelines, Assignment Agreement, Escrow Agreement, Lender Agreement, Servicing Agreement Lakeview and Servicing Agreement Wholesale to ensure fiscal implications are and risks are identified, and risks associated with the program are minimized through written agreement, to the extent possible, and the City's best interests are maintained.
2. Assistance in preparation of presentations regarding the Program to stakeholders and interested parties.
3. Review reasonableness of projected fiscal success of the Program.
4. Perform analysis of fees, costs, and appropriate fiscal structure of the Program, make recommendations, and ensure agreements reflect appropriate structure.
5. Perform comparative analysis of fiscal aspects of the Program to other down payment assistance programs nationally and make recommendations for "best practices."
6. Recommend optimum fiscal structure to maximize client usage and fiscal implications to the clients utilizing the program, while providing reasonable and appropriate compensation to Program participants.
7. Identify fiscal implications relevant to the City with regard to meeting HUD and FHA guidelines for the Program, and recommend structure to best assist in meeting Federal requirements.
8. Perform analysis of the City's fiscal risks associated with the Program, and recommend prudent safe guards to protect the City's fiscal interests.
9. Identify any other financial matter or inherent risk in the implementation of the Program to the City that should be considered or rectified.