

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

Dated as of [_____, 2019]

THIS PROGRAM LENDER AGREEMENT (this “*Agreement*”), dated as of the [____ of _____, 2019], is entered into by and between the City and County of Denver, Colorado, (the “*City*”) and the lending institution executing this Agreement (the “*Lender*”) in connection with the metroDPA Program (the “*Program*”).

WHEREAS, the City expects to make funds available to qualified borrowers (“*Borrowers*”), but solely from funds available under the Program, in connection with certain qualified Federal Housing Administration-insured and United States Department of Veterans Affairs-guaranteed (the “*Government Mortgage Loans*”), Federal National Mortgage Association (“Fannie Mae”) Home Ready for HFAs and Federal Home Loan Mortgage Corporation (“Freddie Mac”) Home Ready for HFAs mortgage loans (the “*Conventional Mortgage Loans*,” and with the Government Mortgage Loans, collectively the “*Qualified Mortgage Loans*”) together with subordinate lien loans for down payment and/or closing cost assistance (“*Second Loans*”), for the purchase of homes; and

WHEREAS, Lender wishes to participate in the Program and has agreed to make Qualified Mortgage Loans and Second Loans to Borrowers pursuant to the metroDPA Program Guidelines associated with the Program, as may be amended from time to time (“*Program Guidelines*”).

NOW, THEREFORE, in consideration of the promises set forth herein, the sufficiency of which is hereby confirmed, the parties mutually agree as follows:

Section 1. Master Servicer. All Lenders must be approved by and in good standing with **Lakeview Loan Servicing, LLC** (the “*Servicer*”). Lenders will also be required to execute a Loan Correspondent Purchase and Sale Agreement and other agreements with such Servicer, as well as follow other Servicer guidelines as they may be updated or amended from time to time by the Servicer (collectively with the Servicer guidelines, the “*Servicer Agreements*”), regarding the origination, funding, delivery and purchase terms and conditions specifically for Qualified Mortgage Loans under this Program. Lender hereby covenants and agrees to originate Qualified Mortgage Loans in accordance with the Servicer Agreements and the Program Guidelines and to deliver such Qualified Mortgage Loans to the Servicer for purchase. Purchases by the Servicer of the Qualified Mortgage Loans thus originated, the reimbursement of the “Program Assistance” (as defined in the Program Guidelines) advanced by such Lender on behalf of the City and the compensation due to the Lender as specified in the Program Guidelines, will be made following receipt and review of closing documents, including evidence of compliance with the Program Guidelines, applicable Qualified Mortgage Loan underwriting requirements, Freddie Mac requirements, and federal and state regulations, and satisfaction of any other conditions to purchase under the Servicer Agreements.

Section 2. Covenant to Originate Mortgage Loans. The Lender hereby acknowledges its receipt and acceptance of the Program Guidelines established in connection with the Program, and the Lender hereby covenants and agrees to originate Qualified Mortgage Loans and Second Loans in accordance with the Program Guidelines as they may be updated or amended from time to time by the City with notice to the Lender and applicable federal, state and local laws, rules and regulations. The Program Guidelines, including but not limited to all representations, warranties and covenants made by the Lender therein, are incorporated by reference into this Agreement to the same extent as if set forth herein, and Lender agrees to be bound thereby for the benefit and protection of the other parties, and their successors and assigns.

Lender specifically represents and warrants to the City: (a) all representations, warranties, covenants and indemnities that Lender may make at any time to the Servicer are automatically repeated with respect to each Qualified Mortgage Loan originated by Lender under this Program; (b) with respect to the origination of such Qualified Mortgage Loans, Lender agrees to indemnify the City and George K. Baum & Company, or its successor and assigns (the “Program Administrator”), as referenced below and hold the City and the Program Administrator

harmless from all loss, liability and claims for the same purposes and to the same extent as made by Lender to the Servicer in any Agreements with such Servicer; (c) each Borrower on any Qualified Mortgage Loan that Lender shall originate under the Program will be qualified based on the Program Guideline requirements and that the Program Assistance was used in the appropriate manner for the amount and purposes intended, with no cash back to the Borrower, or any other person; (d) Lender shall disclose the repayment terms and conditions of any Second Loan financing on behalf of the City, using the City's disclosure statement as provided, and if Lender so chooses, its own subordinate financing disclosures, at the appropriate times in accordance with the Program Guidelines and applicable federal, state and local law, rules and regulations, and Consumer Financial Protection Bureau guidelines; (e) Lender shall accurately complete and generate the Second Loan closing documents as provided for review and signature by the Borrower on behalf of the City; and (f) Lender is ultimately responsible for the return and receipt of the properly recorded first deed of trust and subordinate second lien deed of trust within 90 days of the loan closing to the Servicer.

To the extent the Program Assistance is advanced by the City, or the City causes the Lender or the Servicer to advance Program Assistance on behalf of the City, and the related Qualified Mortgage Loan does not close, is not eligible for sale to the Servicer or to be pooled for any reason, are not purchased by the Servicer for any reason or are to be repurchased by the Lender prior to being pooled for any reason, the Lender hereby agrees to reimburse the City or Servicer with respect to any such Program Assistance so advanced by the City or the Servicer on behalf of the City, as applicable.

Failure by the Lender to perform its obligations under this Agreement and the Program Guidelines may result in certain penalties, the repurchase of the Second Loans or the suspension of its participation in the Program.

Section 3. Amendments, Revisions. Program specifics as defined herein, together with those specified in this Agreement, the Program Guidelines and all Servicer Agreements are subject to change with notice to the Lender. Any such changes will not adversely affect those Qualified Mortgage Loans for which a commitment has been made, except to the extent set forth in any Servicer Agreements.

Section 4. 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 5. 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 6. 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.

Section 7. Notices. The primary contacts and contact information for the Lender have been provided by the Lender in **Exhibit A** of this Agreement. The Lender agrees to cooperate with the City, the Servicer and the Program Administrator in the marketing of the Program.

Section 8. 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.

Section 9. Program Participation Fee and Termination. The Lender acknowledges that the City may charge, at its sole discretion, an annual not to exceed fee of \$500 for participation in the Program. The parties to this Agreement may terminate this Agreement without cause at any time by giving the other party at least thirty (30) business days' written notice.

Section 10. No Discrimination in Employment. In connection with the performance of all work under this Agreement, the Lender 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 11. Records, Reports, and Inspection.

(a) *Reports and Information.* The Lender 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, including Lender's policies, procedures, internal controls and training materials related to Lender's compliance with applicable federal, state and local laws, rules and regulations applicable to its responsibilities under this Agreement.

(b) *Audits.* The Lender 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 12. Subject to Appropriation; No Multiple Year Obligation. 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 Lender 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 13. 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 14. 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").

(a) The Lender certifies that:

i. 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 Lender is obligated to provide under this Agreement.

ii. 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 Lender is obligated to provide under this Agreement.

(b) The Lender also agrees that:

i. It shall not knowingly employ or contract with an illegal alien to perform services the Lender is obligated to provide under the Agreement.

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

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

iv. 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 Lender 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.

v. If it obtains actual knowledge that a subcontractor performing services the Lender 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 Lender 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.

vi. 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 Lender violates any provision of this Section 14, the City may terminate this Agreement. If the Agreement is so terminated, the Lender 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 Lender from submitting bids or proposals for future contracts with the City.

Section 15. 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 16. 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 17. 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 Lender 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 Lender shall not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The Lender represents that the Lender 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 Lender by placing the Lender's own interests, or the

interests of any party with whom the Lender 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 Lender written notice which describes the conflict.

Section 18. Indemnification. The Lender shall indemnify, hold harmless and defend the City (except to the extent of gross negligence or willful misconduct by the City) and the City's officers, members, directors, counsel, officials, financial advisors, agents and employees of each of them from and against: (i) any and all claims or proceedings by or on behalf of any person directly or indirectly arising from any cause whatsoever in connection with this Agreement and (ii) all reasonable costs, expenses, damages, counsel fees or liabilities incurred in connection with any such claim or proceeding brought thereon.

[signatures on following page]

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

CITY:

CITY AND COUNTY OF DENVER, COLORADO

By _____
Chief Financial Officer

LENDER:

By _____

Name: _____

Title: _____

[Lender signature page to metroDPA Program Lender Agreement]

Acknowledged by:

PROGRAM ADMINISTRATOR

GEORGE K. BAUM & COMPANY

By _____
Name: _____
Title: _____

[Program Administrator signature page to metroDPA Program Lender Agreement]

Lender Contact Information / Authorization

Program Name: _____

Lender/Broker Name: _____

Mailing Address: _____

Main Phone Number: _____

Main Email Address: _____

Website (if applicable) _____

Colorado Branch Offices

ADDRESS/CITY	Primary Contact	Telephone Number

If you have your own listing of Branch offices and contact information, please attach to this form.

Does the Program have authorization to use your Branch Office Address, Primary Contact and/or Telephone Number in its marketing material or for posting to its web site? (Y/N) _____

Corporate Offices by Department

Department	Primary Contact	Telephone Number	Email
Administration			
Bulletin/Notices			
Lock Desk			
Processing			
Final Documents			
Underwriting			
Other			

By providing telephone numbers and email addresses, consent is given to receive telephone calls and emails sent by or on behalf of the City, Lakeview Loan Servicing and GKB until such consent are withdrawn in writing.