

SELLER AND SERVICING AGREEMENT

This Seller and Servicing Agreement (this “Agreement”), made and entered into on [_____, 2019], between (1) the City and County of Denver, Colorado, a legally and regularly created, established, organized and existing home rule city, municipal corporation and political subdivision under the provisions of Article XX of the Constitution of the State of Colorado (the “State”) and the Home Rule Charter of the City and County of Denver, Colorado (the “City”), and [_____] whose address is [_____] a [_____] duly organized and validly existing under the laws of the State of [_____] and authorized to do business in the State (the “Servicer”, and together with the City, the “Parties”, and each, a “Party”).

WHEREAS, the Program (as defined herein) will involve the origination and servicing of qualified first mortgage loans that are eligible for guarantees by, or sale to or pooling with the Federal Home Loan Mortgage Corporation (“Freddie Mac”), or the Federal National Mortgage Association (“Fannie Mae”), or eligible for Federal Housing Administration (“FHA”) insurance, United States Department of Veterans Affairs (“VA”) guarantees, United States Department of Agriculture (“USDA-RD”), or guarantees, and pooling in mortgage-backed securities guaranteed by the Government National Mortgage Association (“GNMA”) (collectively the “Qualified Mortgage Loans”, as more fully defined below), all under and in accordance with the laws of the State; and

WHEREAS, the City will provide for Program Assistance under the Program to a qualified Borrower (as defined hereinafter) related to such Qualified Mortgage Loans; and

WHEREAS, the Qualified Mortgage Loans under the Program will be either sold to the secondary mortgage market to Fannie Mae or Freddie Mac, or pooled in mortgage-backed securities guaranteed by GNMA, at no risk to the City; and

WHEREAS, the Servicer wishes to participate in the Program, has received from the City a copy of the Program Guidelines, has reviewed and understands the Program Guidelines, and has agreed to price, originate and service such Qualified Mortgage Loans in accordance with the Program Guidelines as such documents are updated from time to time.

NOW, THEREFORE, in consideration of the representations and mutual agreements herein contained, the City and the Servicer agree as follows:

I. DEFINITIONS; INTERPRETATION

1.1 Definitions. The terms defined in this Section shall for all purposes of this Agreement have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

Administrator means George K. Baum & Company or its successors and assigns, which will serve as the Program Administrator.

Agent means an agent of the City designated in writing to the Servicer and the Administrator.

Agreement means this Seller and Servicing Agreement.

Borrower means each qualified party obligated to repay a Qualified Mortgage Loan, whose qualifications shall be further defined in the Program Guidelines.

Business Day means any day on which the Federal Reserve Bank of New York and the government securities markets are open for business.

City means the City and County of Denver, Colorado, a legally and regularly created, established, organized and existing home rule city, municipal corporation and political subdivision under the provisions of

Article XX of the Constitution of the State of Colorado and the Home Rule Charter of the City and County of Denver, Colorado (the “Charter”).

Closing Cost Assistance means the portion of the Program Assistance applied only to closing costs, discounts, upfront mortgage insurance fees and other Program and mortgage related fees, but not to the Borrower’s down payment.

Code means the Internal Revenue Code of 1986, as amended.

Conventionally Insured Mortgage Loans means Qualified Mortgage Loans eligible for sale to or pooling with either Fannie Mae or Freddie Mac.

Down Payment Assistance means the amount of the Program Assistance applied towards the Minimum Borrower Investment as required under FHA, VA, USDA-RD, GNMA, Fannie Mae or Freddie Mac guidelines, as applicable.

Fannie Mae means the Federal National Mortgage Association.

Fannie Mae Guide means the Federal National Mortgage Association Selling and Servicing Guide, as amended from time to time.

FHA means the Federal Housing Administration of HUD, or any successor thereto.

Freddie Mac means the Federal Home Loan Mortgage Corporation.

Freddie Mac Guide means the Freddie Mac Seller/Servicer Guide, as amended from time to time..

GNMA means the Government National Mortgage Association.

GNMA Guide means the GNMA I Mortgage Backed Securities Guide and GNMA Handbooks, as amended from time to time..

Guide means the GNMA Guide, Fannie Mae Guide, Freddie Mac Guide or any other applicable guide or requirement of FHA or VA, as applicable and as amended from time to time.

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

Lender means, for the purposes of this Agreement, the Servicer as the originating Lender of its own Qualified Mortgage Loans under the Program.

Minimum Borrower Investment means the minimum amount of funds required to be paid from the Borrower’s own resources towards the purchase of property securing a Qualified Mortgage Loan as required in the Program Guidelines.

Program means the metroDPA Program and related loan origination and servicing program established by the City, the Servicer and the Administrator for the financing of Qualified Mortgage Loans and Program Assistance towards the purchase of homes within the program jurisdiction.

Program Assistance means, collectively, the Closing Cost Assistance and Down Payment Assistance, as applicable, advanced to a Borrower by the Lender on behalf of the City.

Program Documents means collectively, the Program Lender Agreement, this Agreement and the Program Guidelines.

Program Fee means the fee payable by the Servicer to the City in connection with each Qualified Mortgage Loan.

Program Guidelines means the document issued by the City, as updated from time to time, setting forth, among other things, the various terms and conditions agreed to by the City and the Servicer pursuant to which Borrowers shall qualify and Qualified Mortgage Loans shall be originated, and by which the Program Assistance shall be funded by the City or on behalf of the City.

Program Income Limits means the maximum qualifying income that a Borrower may earn in order to qualify for Program Assistance, as specified in the Program Guidelines.

Program Lender Agreement means the Program Lender Agreement entered into between the City and the Lender and acknowledged by the Administrator relating to the Qualified Mortgage Loans and Program Assistance, as amended, supplemented and modified from time to time.

Program Rate Sheet means the rate sheet or similar pricing data generated daily by the Servicer and disseminated or made available to its loan officers and loan originators which sets forth the interest rate and Program Assistance options for such day, the form of which shall be as provided by the Servicer. The form of Program Rate Sheet shall be subject to review and approval by the Administrator and the City.

Qualified Mortgage Loan means a mortgage loan originated by Servicer as the Lender under the Program, as further described in the Recitals to this Agreement.

Rate Calculation Worksheet means the calculations generated daily by the Servicer for use by the City and Servicer in determining the interest rate and Program Assistance options to be used in generating the Program Rate Sheet, the form of which shall be provided by the Administrator and subject to the approval of the Servicer.

Second Loan means a repayment obligation of the Borrower to repay all or a portion of the Program Assistance, as required in the Program Guidelines, evidenced by a “Second Note” and secured by a recorded “Second Deed of Trust” in the forms as provided by the Administrator and City.

Servicer means [_____], a [_____] duly organized and validly existing under the laws of the State of [_____] and authorized to do business in the State.

Servicing Documents means those applicable agreements executed by the Servicer with respect to a Qualified Mortgage Loan, including without limitation, the mortgage selling and servicing contract with GNMA, Fannie Mae or Freddie Mac, the applicable Guide and any supplemental servicing instructions or directives provided by GNMA, Fannie Mae or Freddie Mac, all applicable master agreements (including applicable variances), recourse agreements, repurchase agreements, indemnification agreements, loss sharing agreements, and any other agreements, each as between GNMA, Fannie Mae and/or Freddie Mac and the Servicer, and all as amended, modified, restated or supplemented from time to time.

Servicing Fee means the fee payable to the Servicer by the applicable investor in a Qualified Mortgage Loan.

Sole Discretion and other similar terms means that the Servicer’s or the City’s reasonably exercised judgment is final and conclusive absent actual fraud demonstrated by clear and convincing evidence, with actual fraud meaning an active misrepresentation made with intent to deceive on which there is reliance and corresponding damage.

State means the State of Colorado.

USDA-RD means the United States Department of Agriculture Office of Rural Development.

VA means the United States Department of Veterans Affairs.

II. REPRESENTATIONS

2.1 Representations of Servicer. The Servicer represents as follows as of the date of this Agreement:

- (a) The Servicer is duly incorporated or organized, validly existing and in good standing under the laws governing its creation and existence and is qualified, and shall remain qualified for at least so long as it has any remaining obligations pursuant to this Agreement, to do business under the laws of the State, with full power to own its properties and conduct its business.
- (b) The execution and delivery of this Agreement by the Servicer in the manner contemplated herein and the performance of and compliance with the terms hereof by it will not violate (i) its certificate of formation or operating agreement, or (ii) any laws, regulations or administrative requirements, in each case, in any manner which could have any material adverse effect whatsoever upon the validity, performance or enforceability of any of the terms of this Agreement applicable to the Servicer, and will not constitute a default under or result in the breach of any material contract, agreement or other instrument to which the Servicer is a party.
- (c) The execution and delivery of this Agreement by the Servicer do not require the consent or approval of any governmental authority, or if such consent or approval is required, it has been obtained.
- (d) This Agreement has been duly authorized, executed and delivered by the Servicer and, when duly executed and delivered by the other Parties hereto, will constitute the legal, valid and binding obligation of the Servicer enforceable in accordance with its terms.
- (e) The Servicer is an approved servicer of FHA insured, VA guaranteed, USDA-RD guaranteed and Conventionally Insured Mortgage Loans. The Servicer is familiar with all federal, state and local laws, rules and regulations applicable to its performance of and compliance with the terms of this Agreement.
- (f) On the date hereof, there is no pending, or to Servicer's knowledge, threatened litigation or administrative proceedings against Servicer, which, if adversely determined, would materially affect Servicer and its assets or its ability to originate and service Qualified Mortgage Loans.
- (g) The Servicer shall provide the City with the primary contacts for the Servicer and the departments they represent.

2.2 Representations and Agreements of the City. The City represents, and as provided in Sections 2.2(f) and (g), agrees, as follows as of the date of this Agreement:

- (a) The City is a home rule city, municipal corporation and political subdivision under the provisions of Article XX of the Constitution of the State and the Home Rule Charter of the City and County of Denver, Colorado organized and existing under the laws of the State. The City has full legal right, power and authority (i) to enter into this Agreement, and (ii) to carry out, give effect to and consummate all the other transactions on its part contemplated by this Agreement.
- (b) The execution and delivery of this Agreement by the City in the manner contemplated herein and the performance of and compliance with the terms hereof by it will not violate any laws, regulations or administrative requirements in any manner which could have any material adverse effect whatsoever upon the validity, performance or enforceability of any of the terms of this Agreement applicable to the City, and will not constitute a default under or result in the breach of any material contract, agreement or other instrument to which the City is a party.

(c) This Agreement has been duly authorized, executed and delivered by the City and constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms.

(d) All corporate or other proceedings legally required to be taken by the City in connection with the authorization and execution of this Agreement and the consummation and performance of the transactions contemplated hereby and related hereto, and all such approvals, authorizations, consents, licenses or other orders of local, state or federal regulatory agencies, public boards or bodies and any other entity, if any, as may be legally required to be obtained by the City prior to the date of this Agreement with respect to all or any of such matters, have been taken or obtained.

(e) There is no litigation pending or, to the best of its knowledge, threatened against the City with respect to this Agreement or the consummation of the transactions contemplated hereby.

(f) The City is and will remain a governmental unit or “instrumentality of government” in accordance with HUD, GNMA, Fannie Mae and Freddie Mac guidelines, as applicable, with respect to the Down Payment Assistance provided, and the use of such assistance towards the Borrower’s down payment.

(g) The City shall provide the Servicer with a listing of the employees of the City and Administrator responsible for the day-to-day operations of the City relative to this Agreement. The City shall be entitled to revise the listing of its employees and Administrator responsible for such day-to-day operations with the Servicer relative to this Agreement in its Sole Discretion upon providing written notice to Servicer of such revision. The persons so indicated are the persons whom the Servicer is directed to take instructions from and rely on in its dealings with the City, and Servicer shall not be liable to the City, and to the extent allowable under applicable law, shall be fully protected from liability, for acting or refraining to act in reliance on the written and/or oral instructions received from and delivered to these individuals, unless and until the City notifies Servicer in writing of another or different person to so act, which such notice shall be provided reasonably in advance of any such change. Servicer shall also be empowered and permitted to act or refrain from acting in good faith reliance on all instructions received from the Administrator hereunder in connection with the Administrator’s role as Program Administrator, as if such instructions were provided directly by the City.

2.3. Survival of Representations. All of the representations, as applicable, made by the Parties in this Agreement shall survive the execution and delivery of this Agreement.

III. PROGRAM ADMINISTRATION AND PROGRAM TERMS

3.1 Program Administration. The Administrator shall be assigned the overall responsibility of working with the Servicer to design and implement the Program in accordance with the City’s objectives in a manner which satisfies all applicable federal, state and local regulations. Under no conditions may City or Administrator use the Servicer’s name in any web site advertising or marketing except (i) in documents that have been approved in writing in advance by Servicer and (ii) which clearly state that the advertising and marketing is not binding and that only terms and conditions found in written agreements shall be deemed binding.

3.2 Program Terms. The City, Administrator and Servicer shall consult in reasonable good faith regarding the specific Program terms, Qualified Mortgage Loans, Borrower eligibility, Lender and Servicer compensation and Program Assistance, and cooperate in the promulgation of the Program Guidelines. The terms and provisions of the Program Guidelines and all amendments, supplements and modifications thereto shall not be adopted without the agreement of the Parties hereto, through their authorized representatives. Specific terms prescribed by the City for eligible homebuyers, the Program jurisdiction, income limits, loan limits and purchase price limits, the size of the Program Assistance, and the terms of the Qualified Mortgage Loans shall also be included in the Program Guidelines. The Administrator shall notify Servicer in writing at least thirty (30) days in advance of any proposed changes to the Program Guidelines.

3.3. Servicer as Lender Only. Servicer may originate its own Qualified Mortgage Loans but it may not solicit the participation of other originating Lenders on a correspondent or wholesale basis.

3.4. Establishment of Interest Rates and Prices for Qualified Mortgage Loans.

- (a) Rate Calculation Worksheets and Program Rate Sheets. Each Business Day, the Servicer shall price Qualified Mortgage Loans relative to mortgage market conditions consistent with the assumptions in the Rate Calculation Worksheet generated each day. The Servicer shall then prepare and disseminate or make available the Program Rate Sheet generated each Business Day to its loan officers and loan originators approved by Servicer to originate Qualified Mortgage Loans under the Program. The Servicer will post these same rates within its lender portal. The City and any designee of the City shall be provided with copies of the daily Program Rate Sheets, and the Administrator will post the Program Rate Sheets on the metroDPA website hosted by the Administrator.
- (b) Rate Locks and Commitments. The Servicer will accept loan rate locks or commitments and make reasonable efforts to assign Qualified Mortgage Loan commitments in the order they are received and according to the procedures set forth in the Program Guidelines and its own internal lender guides which Servicer shall publish or otherwise make available from time to time in its Sole Discretion. The Servicer shall make available information and updates relating to the Program, pricing and eligibility of Qualified Mortgage Loans to the City and Administrator via the internet, electronically via email or facsimile or in such other manner mutually agreed upon by the City, the Administrator and Servicer.
- (c) No Required Funding. Under no condition is Servicer required to actually fund a Qualified Mortgage Loan, except as may be expressly provided in its own lender guides, FHA, VA, USDA, GUD, Fannie Mae and Freddie Mac guidelines, federal, state or any regulatory guidelines.
- (d) Rate and Price Authorization and Authority. Except as otherwise expressly provided herein, neither the City nor the Administrator is responsible for the dissemination or other methods of making available the Program Rate Sheets for the Qualified Mortgage Loans or involved in or responsible for the delivery or sale of the Qualified Mortgage Loans into the secondary market.

3.5. Down Payment and Closing Cost Assistance.

- (a) Along with the Qualified Mortgage Loan rates and prices, the Servicer shall disclose the available Down Payment Assistance and Closing Cost Assistance as a specified percentage(s) of the final Qualified Mortgage Loan amount in accordance with the Program Guidelines. The Servicer shall create the interface and mechanism, such that at the time any Qualified Mortgage Loan rate is locked with Servicer, the amount and terms of the associated Program Assistance will automatically be reserved as well.
- (b) In accordance with the Program Guidelines, the City may request that the Servicer as the originating Lender advance the committed Program Assistance funds at the loan closing on the City's behalf, to be reimbursed as the Qualified Mortgage Loans are funded or sold into the secondary mortgage market, and the Servicer shall be reimbursed in accordance with the terms specified in an addendum to this Agreement.
- (c) At the time the Qualified Mortgage Loan is reserved, the commitment to fund the Down Payment Assistance and Closing Cost Assistance shall be binding on the Servicer as Lender on behalf of the City.

3.6. Origination and Funding of Qualified Mortgage Loans.

- (a) The Servicer may originate its own Qualified Mortgage Loans as an originating Lender but it may not consider the participation of lenders or third-party originators on a correspondent or wholesale (broker) basis.
- (b) All Qualified Mortgage Loans will be originated in accordance with applicable FHA, VA, USDA-RD, HUD, Fannie Mae or Freddie Mac guidelines, the applicable Guides, the Program Documents, and federal, state and local laws and regulations related to such Qualified Mortgage Loans.

(c) The terms and conditions for the provision, and the amount of Program Assistance according to the Qualified Mortgage Loan type and rate offered to the Borrower, the repayment terms and required documentation, if any, as determined by the City are specified in the Program Guidelines.

(d) The Program Guidelines specify the maximum origination fees that may be charged to the Borrower and the premium pricing relative to par rate pricing that the Servicer may pay when Qualified Mortgage Loans are funded. Any other fees and costs charged to the Borrower in connection with the Qualified Mortgage Loan shall be “reasonable and customary” and in accordance with HUD, VA, USDA-RD, GNMA, Fannie Mae or Freddie Mac guidelines, as applicable and as may be amended from time to time.

3.7. Servicer Review of Qualified Mortgage Loans. The Servicer may, but is not required to, review each Qualified Mortgage Loan to ensure that it is eligible for sale or for sale into the secondary mortgage market or to Freddie Mac or Fannie Mae, or eligible for inclusion in GNMA, Fannie Mae or Freddie Mac guaranteed securities. The Servicer shall be solely responsible for determining such eligibility and to confirm the accuracy or completeness of the information set forth in the documents and materials provided by Borrower and for the origination, underwriting, and closing of the Qualified Mortgage Loan. If the Servicer as Lender in its Sole Discretion determines that the Qualified Mortgage Loan is unacceptable for any reason, no other provisions in this Agreement or Program Documents to the contrary withstanding, it shall have no obligation to fund the Qualified Mortgage Loan. The Servicer will be responsible for collecting and retaining certain final mortgage documents for each Qualified Mortgage Loan funded, and have the right to charge and retain late fees for said final, recorded mortgage documents.

3.8. Program Assistance Documents. The forms of the necessary documents and disclosures for the Program Assistance shall be specified in the Second Loan documents as provided, and are subject to amendment by the agreement of: (a) the City or the Administrator on behalf of the City, and (b) the Servicer, at any time during the term of this Agreement as necessary to enable the Administrator and the Servicer to effectively administer the Program; provided however that if a Qualified Mortgage Loan has been locked, then the Program Assistance documents may not be altered as to that Qualified Mortgage Loan. The Servicer shall provide the City with certain coordinating procedures specified by the Servicer as a condition for the origination of the Qualified Mortgage Loans to determine if the terms and usage of the Program Assistance complies with HUD, VA, USDA-RD, GNMA, Fannie Mae or Freddie Mac requirements, as applicable.

3.9. Borrower Eligibility and Income Qualification. The Servicer may, but is not required to, review the qualifying income as reported for loan underwriting purposes or such other applicable form indicating the Borrower’s qualifying income, to ensure that the Borrower’s qualifying income is within the Program Income Limits as specified in the Program Guidelines. The Servicer shall be entitled to rely upon the Administrator with respect to such qualifying income relative to the Program Income Limit, but the Servicer as Lender is responsible for determining the accuracy as to how the qualifying income was calculated. If the Administrator or Servicer determine that the Program Income Limits have been exceeded, the Servicer is not obligated or required to fund the Qualified Mortgage Loan. After a Qualified Mortgage Loan has been funded, if it is determined that the qualifying income exceeds the Program Income Limits, or if such loan does not comply with the Program Documents, the Qualified Mortgage Loan may be subject to mandatory repurchase by the Servicer. Prior to the funding of a Qualified Mortgage Loan, the Servicer is permitted to require a confirmation from the Administrator of compliance of the Qualified Mortgage Loan with the Program Guidelines.

3.10. Program Fee Payable to the City. Once the Qualified Mortgage Loans have been funded by the Servicer, the Servicer shall be invoiced by the Administrator for the Program Fee to the City as specified in the applicable Rate Calculation Worksheets.

3.11. Assignment of an ongoing City Rate Add On. The City may request, as an addition to or in lieu of a Program Fee, an ongoing City fee to be added to the Mortgage Loan rate, either as a portion of the ongoing Servicing Fee over and above the minimum Servicing Fee required by the Servicer or such other form of remittance approved by the Servicer and by Freddie Mac, Fannie Mae or GNMA, as applicable, which shall be sized, assigned and remitted monthly to the City or its assigns in accordance with GNMA, Fannie Mae and Freddie Mac guidelines, and

which will be subject to the approval of the Servicer prior to the origination of any affected Qualified Mortgage Loans.

To the extent the Program is eligible under Freddie Mac's Cashflow Initiative SM, the Servicer is not directly responsible or liable for, nor is it involved in, the monthly payment of such an ongoing City Rate Add On (referred to by Freddie Mac as an City Remittance) to the City, the securitization of such City Remittances, or the delivery of such securitizations to the City or its assigns.

3.13. Loan Reporting. The Servicer shall provide the City and the Administrator within ten (10) Business Days upon request with either on-line or spreadsheet reporting of Qualified Mortgage Loans as such are reserved, closed and sold or pooled, in a form mutually agreed to by Servicer and Administrator. The Servicer shall provide the City and the Administrator with such data on Borrowers, Qualified Mortgage Loans, the locked-in Qualified Mortgage Loan rates and accompanying Program Assistance and specific property information as specified by the City and the Administrator and agreed to by the Servicer. The Servicer will periodically, upon request, provide the City with loan performance reports on active and delinquent Qualified Mortgage Loans. Notwithstanding the foregoing, Servicer shall not be required to provide any reporting that it reasonably determines it cannot provide to the City or Administrator pursuant to applicable law, HUD, VA, USDA-RD, GNMA, Fannie Mae or Freddie Mac guidelines, as the same may be amended from time to time.

3.14. Financing of Qualified Mortgage Loans. During any period of time between Servicer's funding of a Qualified Mortgage Loan and the sale or pooling of such Qualified Mortgage Loans to or with GNMA, Fannie Mae or Freddie Mac, Servicer may pledge such Qualified Mortgage Loan (or sell with a repurchase obligation) to a financial institution providing the financing to Servicer.

IV. SERVICING OF LOANS

4.1 Overall Responsibility. The Servicer shall service Qualified Mortgage Loans for the Program in accordance with the applicable Program Documents, subject to Section 4.4.

4.2 Limitation on Liability of Directors, Officers, Employees and Agents of the Servicer. Without expanding any liability that exists at law, no director, officer, employee or agent of the Servicer, if acting in good faith, shall be under any personal liability to the City, or its assigns, for any action taken or for refraining from the taking of any action pursuant to this Agreement. Nothing in this Section 4.2 is intended to imply liability on the part of any person who otherwise would not be liable.

4.3 Indemnification of the City.

(a) The Servicer shall pay, defend, protect, indemnify and hold the City and its officers, directors, internal counsel, officials, employees, and the Mayor and members of its City Council (each, an "City Indemnified Party") harmless for, from and against any and all direct and actual out-of-pocket losses, damages, costs or expenses arising or resulting from any failure on the part of the Servicer to perform its services, duties and obligations in accordance with the terms and provisions of this Agreement.

(b) The City Indemnified Party entitled to indemnification hereunder shall promptly notify the Servicer of the existence of any claim, demand or other matter to which it reasonably expects the Servicer's indemnification obligation applies, and shall give the Servicer a reasonable opportunity to defend the same at its own expense and with counsel reasonably satisfactory to the City Indemnified Party, provided that the City Indemnified Party shall at all times also have the right to participate fully in the defense at its own expense. If the Servicer shall, after receiving notice of the Servicer's indemnification obligation and within a period of time necessary to preserve any and all defenses to any claim asserted, fail to assume the defense, the applicable City Indemnified Party shall have the right, but not the obligation, with prior notice to the Servicer, to undertake the defense of the claim, in which case the Servicer shall be responsible for the reasonable counsel fees, costs and expenses of the City Indemnified Party in conducting its defense if the City Indemnified Party was entitled to indemnification pursuant to Section 4.3(a). Neither the Servicer nor

the City Indemnified Party is entitled to settle, compromise, decline to appeal, or otherwise dispose of any claim without the written consent of the other, which consent shall not be unreasonably withheld or delayed.

(c) The City Indemnified Parties, other than the City, shall be considered to be intended third-party beneficiaries of this Agreement for purposes of this Section 4.3. The provisions of this Section 4.3 shall be in addition to all liability which the Servicer may otherwise have and shall survive any termination of this Agreement.

4.4 Servicer's Duties and Responsibilities.

(a) Subject to applicable law and regulations, and the requirements under the Servicing Documents and applicable VA, FHA, USDA-RD, GNMA, Fannie Mae and Freddie Mac guidelines, as may be amended, the Servicer shall use diligent efforts to enforce and take all reasonable steps, actions and the proceedings for the enforcement of all material terms, covenants and conditions of any Qualified Mortgage Loans, including the prompt payment of all Qualified Mortgage Loan principal and interest payments and all other amounts due thereunder.

(b) Servicer shall perform all loan servicing duties in accordance to and in compliance with, as and when applicable, VA, FHA, USDA-RD, GNMA, Fannie Mae or Freddie Mac guidelines, as may be amended. Servicer shall not be liable, and to the extent allowable under applicable law Servicer shall be held harmless, for its performance of loan servicing duties that are carried out in good faith and in material compliance with this Agreement, the Servicing Agreements and applicable requirements of VA, FHA, USDA-RD, GNMA, Fannie Mae or Freddie Mac, or for any action taken, or for refraining from the taking of any action, in good faith pursuant to this Agreement; provided, however, that this provision shall not protect Servicer against any liability pursuant to Section 4.3. The Servicer shall not be responsible for carrying out any loan servicing duties and responsibilities stated herein or requested by the City that the Servicer, in its reasonable discretion, believes to be in conflict with the Servicing Agreements and applicable requirements of VA, FHA, USDA-RD, GNMA, Fannie Mae or Freddie Mac, or applicable laws and regulations. Servicer may rely in good faith on any document of any kind which, prima facie, is properly executed and submitted by any appropriate person respecting any matters arising hereunder.

4.5 Servicing Standards. With respect to all Qualified Mortgage Loans in the Program, the Servicer will service such Qualified Mortgage Loans in accordance with generally accepted practices of the mortgage lending industry, this Agreement and applicable federal, state and local laws, rules and regulations.

4.6 Payments to the Servicer and Servicer Compensation. The Servicer may charge a one-time funding fee and tax and flood service fees, or such other reasonable and customary amounts as agreed upon in writing by the Servicer and the City.

4.7 Second Loan Servicing Standards.

(a) The Servicer shall have the full power and authority to do any and all things in connection with the servicing of the Second Loans that it may deem necessary or desirable and shall exercise the same degree of care that it exercises with respect to the servicing of the related Qualified Mortgage Loan, provided that the City and Administrator acknowledge that this degree of care does not require the performance of servicing obligations other than those described in this Section 4.7. The Servicer shall service the Second Loan on behalf of the City in compliance with any GNMA, Fannie Mae or Freddie Mac guidelines, as may be amended, that apply to the servicing of such subordinate lien loans payable to housing finance agencies and applicable federal, state and local laws, rules and regulations. The Servicer shall execute and deliver any and all instruments, documents, and writings reasonably necessary to service the Second Loan evidenced by a Second Note and secured by a Second Trust/Deed.

(b) The Servicer shall not be responsible or liable, and to the extent allowable under applicable law the Servicer shall be held harmless, for failing to perform any requirements of this Agreement that conflict with FHA, VA, USDA-RD, GNMA, Fannie Mae or Freddie Mac guidelines, as may be amended.

(c) Servicing obligations to be performed by the Servicer for the Second Loans will be limited to calculating and remitting payoff funds. The Servicer shall not be obligated to provide any legal services to realize on any Deed of Trust obligation by means of foreclosure proceedings or other actions on behalf of the City, unless the City and the Servicer, on a loan by loan basis, establish a written agreement regarding fees and expenses to be paid by the City and the functions to be performed by the Servicer.

(d) The Servicer shall not be responsible or liable, and to the extent allowable under applicable law the City agrees to hold the Servicer harmless, in any situation in which the Servicer is confronted with a conflict in fiduciary or other duties arising from different responsibilities between the Servicer's obligations to FHA, VA, USDA-RD, GNMA, Fannie Mae and Freddie Mac, as applicable, on the Qualified Mortgage Loans and the City's requested actions on the Second Loans. The City further agrees that the Servicer's duties to FHA, VA, USDA-RD, GNMA, Fannie Mae and Freddie Mac, as applicable, always have priority over any fiduciary duty the Servicer may have to the City and in such event of a conflict the Servicer has no liability, or fiduciary responsibility, to the City, as related to that conflict. The Servicer shall promptly notify the City and the Administrator if the Servicer reasonably believes that a conflict of interest may exist, whether in the present or in the future, between the Servicer's obligations to FHA, VA, USDA-RD, GNMA, Fannie Mae and Freddie Mac, as applicable, on the Qualified Mortgage Loans and the City's requested actions on the Second Loans.

(e) If the Second Loan provides for a principal forgiveness or other reduction of any repayment obligation over time ("forgiveness") and the Borrower has qualified for such forgiveness, then Servicer will: (i) upon written request from the City, prepare and distribute to borrowers on behalf of the City IRS Form 1099-Cs to evidence forgiven debt related to the Second Loans; and (ii) in no later than the month following the satisfaction of the debt secured by the Second lien, file on the City's behalf the appropriate documentation with the applicable county recorder's office, or assist the Administrator in that regard, to ensure that the lien of the related Second Trust/Deed is released.

(f) If a Second Loan is purchased by Servicer or any third party, the obligations of Servicer under this Section 4.7 terminate upon such purchase.

4.8 Assumptions Restrictions. Subject to applicable law, rule, regulation or requirement of FHA, VA, USDA-RD, GNMA, Fannie Mae and Freddie Mac, in any case in which a Qualified Mortgage Loan originated under the Program has been or is about to be conveyed by the Borrower and the purchaser desires to assume all the rights and obligations of the Borrower under the Qualified Mortgage Loan, the Servicer shall enter into an assumption agreement relating to the Qualified Mortgage Loan with the purchaser; provided that the purchaser complies with the requirements of the Program, as determined by the City. In connection with any such assumption agreement, the interest rate of the related Qualified Mortgage Loan shall not be changed; however, the Servicer may charge in connection with each assumption to the extent permitted by law and FHA, VA, USDA-RD, GNMA, Fannie Mae and Freddie Mac guidelines, as applicable and as may be amended, a fee, to be paid by or on behalf of the purchaser, plus the reasonable and customary out-of-pocket costs paid or incurred by the Servicer.

4.9 Joinder in Legal Proceedings. Upon the reasonable request of the Servicer, and at the Servicer's sole expense, the City shall join as plaintiff in any legal proceeding brought by the Servicer against any Lenders concerning any obligations of Lenders under this Agreement; and provided, however, that Servicer may initiate and prosecute any claims of any kind or character against the Lenders for violations of (including claims for damages), without the City being named a party thereto and the City agrees that Servicer may so inform any court or tribunal of this fact. If the City joins in any such legal proceeding at the reasonable request of Servicer, Servicer shall indemnify, and hold harmless, the City from any and all costs and expenses in any form and for whatever reason incurred in connection with such proceeding, including, but not limited to, any and all costs and attorneys' fees of a defendant required to be paid by the City by court order in the event of a judgment in favor of such defendant.

4.10 Assignment of Servicing Obligations. The Servicer may assign its servicing rights and obligations under this Agreement to another qualified servicer, provided that such assignment is evidenced by such other agreement acceptable to the City, Administrator, HUD, GNMA, Fannie Mae and Freddie Mac as applicable in which the

assignee agrees to assume all of the Servicer's obligations hereunder and agrees to provide its services for the same fee as provided in this Agreement. Any such assignment is subject to the prior written consent of the City or its successors or assigns, which consent will not be unreasonably withheld, conditioned, or delayed. It is understood and agreed that the Servicer may contract for a third party to perform some or all of its servicing obligations, which shall not be considered an assignment for the purposes of this Agreement.

4.11 Liability of Servicer. The Servicer shall be required to perform only those duties and observe only those covenants specifically set forth in this Agreement and shall be liable hereunder only to the extent such obligations are explicitly imposed upon the Servicer, subject to any limitations of liability herein set forth. If and to the extent the Servicer is required hereunder to perform and act at the direction of the City, the Servicer shall be obligated to act only according to and may rely upon such direction.

4.12 Limits on Servicer Liability. Notwithstanding Servicer's obligations in Section 4.3, or anything else to the contrary in this Agreement, Servicer shall not be obligated to indemnify or hold harmless the City Indemnified Parties or Administrator for any claims or liabilities resulting from the willful or grossly negligent acts or omissions of the City or Administrator. The Servicer expressly understands and agrees that any performance bond or insurance protection required of the Servicer, or otherwise provided by the Servicer, shall in no way limit the responsibility to indemnify the City Indemnified Parties as provided in Section 4.3.

4.13 Regarding the Servicer. No other provision in this Article IV or in this Agreement to the contrary withstanding, in the event the Servicer determines in good faith that any requirement imposed hereunder is inconsistent or incompatible with any requirement of any prospective rule, regulation or requirement of GNMA, Fannie Mae, Freddie Mac, or any other person who shall hold title to such loan, as applicable, then Servicer shall promptly provide written notice to the City upon such determination.

V. TERM AND TERMINATION OF AGREEMENT

5.1 Term of Agreement. Unless earlier terminated pursuant to the terms of this Agreement, the obligations and responsibilities of the Parties hereto shall continue (a) for an initial period of [_____] from the effective date of this Agreement, (b) upon the completion of such initial [_____] term, for an additional period of one (1) year, if agreed to in writing by the City and the Servicer, and (c) thereafter for successive one (1) year terms if agreed to in writing by the City and the Servicer, provided, however that after the completion of the initial [_____] term, the City or the Servicer, may terminate this Agreement by sending ninety (90) days' prior written notice of such termination to the other Party. Sections 2.2(g), 4.2, 4.3, 4.4(b), 4.7, 4.9, 4.11, 4.12, 5.7, 6.8 and 6.9 hereof shall survive the termination of this Agreement and the payment and performance of all other of the Parties' obligations hereunder.

5.2 Causes of Termination. Upon the happening of any one or more of the following events (herein called a "*default*"), the non-defaulting Party shall have the remedies specified in Section 5.3 hereof, in addition to any other remedies it may possess at law or equity, or in any other agreements:

(a) Failure by a Party duly to observe or perform in any material respect any covenant, condition or agreement in this Agreement to be observed or performed by it for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the defaulting Party, unless the non-defaulting Party shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the non-defaulting Party will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the defaulting Party within the applicable period and diligently pursued until the default is corrected (which shall be no later than one hundred and twenty (120) days after the default notice is sent);

(b) Entry of a decree or order of a court, agency or supervisory authority having jurisdiction for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of its affairs, against a Party hereto and such decree or order shall have remained in force, undischarged or unstayed for a period of ninety (90) days;

(c) Consent by a Party hereto to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings of or relating to such Party or of or relating to all or substantially all of its property;

(d) An admission by a Party hereto in writing of its inability to pay its debts generally as they become due, or the filing of a petition to take advantage of any applicable insolvency or reorganization statute, or the making of an assignment for the benefit of its creditors or voluntarily suspending payment of its obligations; or

(e) The discovery by a Party hereto of a breach of any representation by another Party in this Agreement in any material respect on or as of the date made, and failure of such breaching Party to cure such breach within of thirty (30) days after written notice, specifying such breach and requesting that it be remedied.

5.3 Remedies. Whenever any event referred to in Section 5.2 hereof shall occur and be continuing, and after expiration of any cure period referred to in Sections 5.2(a) and 5.2(e) hereof, if applicable, the non-defaulting Party, may take any one or more of the following remedial steps:

(a) By notice in writing to the defaulting Party, and subject to applicable State and federal law, terminate this Agreement.

(b) Take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due under this Agreement or to enforce performance and observance of any obligation, agreement or covenant of a Party under this Agreement.

5.4 Termination of Provisions of Agreement relating to Originations of Qualified Mortgage Loans. Either party hereto, at their sole discretion, may direct the termination of any originations and funding pursuant to this Agreement upon no less than sixty (60) days written notice to the other party, provided that no such termination shall terminate the provisions of this Agreement relating to servicing of Qualified Mortgage Loans which have been funded by Seller, and Seller may not have its rights with respect to previously funded Qualified Mortgage Loans, or any Qualified Mortgage Loan in the application process when such notice is sent, affected in any way without its express written consent which it may withhold for any reason in its Sole Discretion. All reservations for Qualified Mortgage Loans under the Program outstanding as of the date of notice of termination and reserved in accordance with the Program Guidelines will be subject to this Agreement. Furthermore, termination of this Agreement shall not affect any rights or obligations arising from Qualified Mortgage Loans funded prior to the effective date of termination.

5.5. Liability after Termination. Termination of this Agreement shall not release a Party from any responsibility or liability on the part of such Party that arises out of events, actions, or omissions that occur prior to termination, subject to the remaining terms of this Agreement. Sections 2.2(g), 4.2, 4.3, 4.4(b), 4.7, 4.9, 4.11, 4.12, 5.7, 6.8 and 6.9 hereof shall survive the termination of this Agreement and the payment and performance of all other of the Parties' obligations hereunder. Without limiting the application of Section 3.8, notwithstanding anything in this Agreement to the contrary, Servicer may immediately terminate any obligation and reject or return to Lender any Qualified Mortgage Loan if Servicer determines in good faith that there has been a material adverse change with respect to Lender or in general market conditions or any deception, fraud, concealment or material misrepresentation has occurred by Lender in performing any of its duties, obligations, responsibilities or actions undertaken in connection with this Agreement or in connection with any Qualified Mortgage Loan sold or committed for sale, to Servicer. In addition, without limiting the application of Section 3.7, if Servicer determines in good faith that Lender has breached any obligation (including a repurchase obligation), representation or covenant under this Agreement or the Program Documents, or will be unable to fulfill any of its obligations, representations or covenants under this Agreement or the Program Documents, Servicer may in its Sole Discretion, suspend any current or future commitment for the funding of Qualified Mortgage Loans by Servicer.

5.6. No Remedy Exclusive. Unless otherwise expressly provided, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any

right or power accruing under this Agreement shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

5.7. Attorney's Fees. To the extent allowable under applicable law, in the event of any action at law or in equity to enforce or interpret the terms of this Agreement, to the extent permitted by law, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other relief to which that party may be entitled.

5.8. Merger. In the event of a merger by or sale of substantially all of the assets of the Servicer, the Servicer shall provide notice within a reasonable time after the merger or sale of assets becomes public information, to the City except for mergers with or sales to entities with ownership and management that is not materially different to that of the Servicer. Any entity into which the Servicer may be merged or consolidated, or any entity resulting from any merger, conversion or consolidation to which the Servicer shall be a party, pursuant to the terms hereof, or any entity succeeding to the business of the Servicer, pursuant to the terms hereof, shall be the successor of the Servicer hereunder and shall assume in writing all of the rights or obligations of the Servicer hereunder. Servicer must obtain the City's consent for any other assignment of this Agreement, provided that if such consent is not provided within thirty (30) days of Servicer's request, Servicer may terminate this Agreement by written notice to the City.

5.9. Transfer of Duties. Upon resignation of the Servicer or termination of this Agreement pursuant to this Article V, the Servicer shall promptly, but not later than thirty (30) days after such resignation or termination, supply all reports, documents and information which are required by the Program Documents, and which are customarily provided upon such termination, to any person or entity designated by the City and shall use its best efforts to effect the orderly and efficient transfer of administration to a new servicer and program administrator designated by the City, including preparation of accounting statements in the form required by GNMA and delivered to the City, or its designee, of all moneys held and all papers and records pertaining to any Qualified Mortgage Loans transferred pursuant to this Section 5.9 (which does not include Qualified Mortgage Loans funded prior to the effective date of termination as set forth in Section 5.4). Except for the foregoing and the obligations listed in Section 5.5, supra, the Servicer shall have no further obligations after termination, provided that the indemnification provisions hereof shall survive the termination of this Agreement.

5.10. Effect of Removal; Certain Rights of Servicer. No other provision in this Article V or in this Agreement to the contrary withstanding, it is understood and agreed that

- (a) Under no conditions or circumstances, may the City or any other person or Party hereunder, be able to remove Servicer as servicer of any of the Qualified Mortgage Loans for which Servicer is acting as the servicer for any reason; and
- (b) Even in the event this Agreement is terminated, this shall not affect the Servicer's right to serve as the servicer of Qualified Mortgage Loans already serviced by Servicer. It is understood that as to such Qualified Mortgage Loans, the Servicer may not be replaced absent its express consent, for any reason.

VI. MISCELLANEOUS

6.1 Notices. All notices, certificates or other communications required to be given hereunder shall be sufficiently given and shall be deemed given when delivered by electronic mail, mailed by first class mail, postage prepaid, or sent by overnight delivery, addressed to the:

As 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

As to the Servicer:

[To Be Provided]

As to the Program Administrator:

<p>George K. Baum & Company 1400 Wewatta Street, Suite 800 Denver, Colorado 80202 Attention: SFH Group Telephone: 303-292-1600 Email: sfhgroup@gkbaum.com</p>	<p>George K. Baum & Company 4801 Main Street, Suite 500 Kansas City, Missouri 64112 Attention: General Counsel Telephone: 816-283-5242 Email: gervais@gkbaum.com</p>
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Any of the foregoing may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Notice as provided herein does not waive service of summons or process.

6.2 Venue and Governing Law. Each and every term, condition, or covenant herein 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, as applicable. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

6.3 Article and Section Headings and References. The headings or titles of the articles and sections hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

6.4 Severability. If any term or provision of this Agreement or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby and shall be enforced to the extent permitted by law. To the extent permitted by applicable law, the Parties hereby waive any provision of law, which would render any of the terms of this Agreement unenforceable.

6.5 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. No failure on the part of a Party hereto to enforce any covenant or provision herein contained, or any waiver of any right hereunder, shall

discharge or invalidate such covenant or provision or affect the right of such Party to enforce the same in the event of any subsequent breach or default; failure to demand strict performance of any covenant or condition of this Agreement shall not be deemed a waiver of such covenant or condition.

6.6 Amendments. This Agreement may be amended, changed, modified or altered only in writing and upon approval of the Chief Financial Officer of the City, or in the absence of the Chief Financial Officer, the Executive Director of the Office of Economic Development of the City, or their designees, and the other Parties hereto. This Agreement may be terminated by the City only in writing and upon approval of the Chief Financial Officer of the City or a person authorized in writing to act on behalf of the Chief Financial Officer of the City, or in the absence of the Chief Financial Officer, the Executive Director of the Office of Economic Development of the City.

6.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. The Parties agree that this Agreement and signature pages may be transmitted between them by facsimile or electronic images and that faxed or electronically imaged signatures shall constitute original signatures and is binding upon the applicable Party.

6.8 Limitation on Liability of Directors, Officers, Employees and Agents of the Parties. No director, officer, employee or agent of a Party hereto shall be under any liability to another Party or any other person or entity for any action taken or for refraining from the taking of any action in good faith pursuant to this Agreement, or for such errors in judgment as a reasonably prudent businessperson would make. Nothing in this Section 6.8 is intended to imply liability on the part of any person who otherwise would not be liable.

6.9 Limitation on Liability of Parties. Each Party to this Agreement shall be liable under this Agreement only to the extent that obligations are explicitly imposed upon and undertaken by the Party against whom enforcement is sought.

6.10 Ownership; Confidentiality. Subject to the remaining provisions hereof, all documents, files and records and their contents regarding Qualified Mortgage Loans (“Records”) maintained by the Servicer hereunder shall belong to the Servicer and/or any assignee of the Servicer. So long as such is not inconsistent with any actual or implied obligations, restrictions or requirements of any assignee or purchaser of any Qualified Mortgage Loan, or any regulation, such Records may be reviewed by the City during normal business hours of the Servicer upon reasonable prior written notice to the Servicer. Copies of all Records maintained by the Servicer shall be delivered to the City upon its written request and delivery to the Servicer of evidence acceptable to the Servicer that such files are necessary or appropriate for the City to perform its obligations hereunder. The City shall pay the necessary and reasonable fees and expenses of the Servicer in connection with such copying request. The Servicer, City and Administrator shall comply with all applicable privacy laws and regulations, and Servicer shall not be obligated to provide such Records if it reasonably determines that it is not permitted to do so pursuant to applicable law, FHA, VA, USDA-RD, GNMA, Fannie Mae or Freddie Mac requirements. It is understood and agreed that the term “Records” includes only loan related documents, not Servicer’s internal books and records.

6.11 Use of Nonpublic Information. Each Party shall only use non-public personal information received from another Party related to any Qualified Mortgage Loans in accordance with federal and state laws and regulations, including but not limited to, as applicable, the Gramm-Leach-Bliley Act and its applicable implementing regulations. Each Party shall maintain commercially reasonable procedures to safeguard the confidentiality of such non-public personal information and to prevent unauthorized disclosure of, access to, or use by any unauthorized party, except as permitted by applicable law. Nothing in this Agreement shall prohibit a Party from disclosing such non-public personal information pursuant to valid and enforceable legal process or State open records laws. Upon receipt of such valid and enforceable legal process or State open record request, if the Party from whom non-public personal information is requested is not the source or owner of such non-public personal information, it shall notify the applicable other Party in writing prior to the disclosure date, if permitted by such legal process or State open record request, so that the Party may, at its expense, seek an appropriate protective order or other appropriate remedy.

6.12. Release of Non-public Personal Information. If a Party shall request or demand release of any non-public personal information pursuant to valid and enforceable legal process or State open record request, the Party requested to provide such may, before disclosing same, require the requesting Party to demonstrate its familiarity with the

privacy laws referenced herein and to demonstrate reasonable security procedures to safeguard and handle such non-public personal information.

6.13. Professional Liability (Errors And Omissions). The Servicer shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

6.14. No Discrimination in Employment. In connection with the performance of all work under this Agreement, the Servicer 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. The Servicer agrees to insert the foregoing provision in any subcontract of services that Servicer is obligated to provide under this Agreement that also relates only to the implementation of the Program.

6.15. Records, Reports, and Inspection.

(a) Reports and Information. The Servicer 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 reasonably request pertaining to the performance of services by Servicer under this Agreement (including Servicer's policies, procedures, internal controls and training materials related to the provision of services under this Agreement in a manner that complies with applicable federal, state and local laws, rules and regulations) as a part of any of its audit rights or in connection with open records requests, provided that this obligation shall not extend to additional operational reporting without Servicer's approval.

(b) Audits. The Servicer shall, during normal business hours and as often as the City may reasonably deem necessary, and upon reasonable advance notice, make available to the City, including its auditor, for examination all reasonably requested records and data with respect to the performance of services by Servicer contemplated under this Agreement and shall permit the City or its designated or authorized representative to audit and inspect all reasonably requested invoices, materials, and other data with respect to the performance of services by Servicer under this Agreement. Such records shall be maintained for a minimum period of three (3) years following the later of payment or performance of services hereunder.

6.16. 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 Servicer 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.

6.17. 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.

6.18. 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 Servicer shall not knowingly 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. Nothing contained herein shall be construed as limiting or prohibiting an employee of the City from being qualified as a Borrower pursuant to the Program under the same terms and conditions as a member of the general public.

B. The Servicer shall not knowingly engage in any transaction, activity or conduct which would result

in a conflict of interest under this Agreement. The Servicer represents that the Servicer has disclosed any and all current or potential conflicts of interest that would arise from its present engagement in any transaction, activity or conduct, of which such conflict of interest the Servicer has or reasonably should have actual knowledge. A “conflict of interest” exists when an employee, officer or official of the City takes “direct official action,” as that term is defined in the City’s Code of Ethics, as amended, on a matter before the City in which he or she, or an immediate family member, a business associate or an outside employer has a “substantial financial, contractual, or employment interest”. The City, in its sole discretion but in consultation with the Servicer, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists as a result of Servicer’s engagement in any transaction, activity or conduct, after the City has given the Servicer written notice which describes the conflict and such conflict has not been resolved to the City’s reasonable satisfaction within a period of thirty (30) days of such notice. The engagement of the Servicer in transactions with the Lenders under the Loan Correspondent Purchase and Sale Agreements, or other customary agreements with the Lenders, shall not constitute a conflict of interest.

6.18. No Employment of Illegal Aliens to Perform Work Under this Agreement.

a) 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”).

b) The Servicer 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 Servicer 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 Servicer is obligated to provide under this Agreement.

c) The Servicer also agrees that:

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

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

d) If the Servicer violates any provision of Section 6.18(c), the City may terminate this Agreement. If the Agreement is so terminated, the Servicer 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 Servicer from submitting bids or proposals for future contracts with the City.

6.19. 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.

6.20. Electronic Signatures and Electronic Records: The Parties and the Administrator consent to the use of electronic signatures by each of the Parties and the Administrator. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by each of the Parties and the Administrator. The Parties and the Administrator 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 and the Administrator 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.

6.21. Authorized Persons. The decision whether to take any actions that are required to be taken by the City under this Agreement, including delivery of Rate Calculation Worksheets and Program Rate Sheets, shall be determined by the Chief Financial Officer of the City or a person authorized in writing to act on behalf 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. Any addendum to this Agreement that is in furtherance of the City's Program Assistance objectives may be executed by the Chief Financial Officer of the City or a person authorized in writing to act on behalf 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.

6.22. 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.

[Signature pages follow]

IN WITNESS WHEREOF, the City and the Servicer have caused this Agreement to be signed in their respective names by their respective duly authorized officers, all as of the date first above written.

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

[City Signature Page to Seller and Servicing Agreement]

[_____], as Lender and Servicer

By: _____

Name: _____

Title: _____

[Servicer Signature Page to Seller and Servicing Agreement]

Administrator Joinder and Acknowledgment

The undersigned hereby acknowledges and accepts its appointment as Administrator of the Program and hereby acknowledges, accepts and agrees to all duties, obligations and covenants imposed upon it as Administrator under this Agreement.

George K. Baum & Company, as Administrator

By: _____

Name: _____

Title: _____

[Administrator Signature Page to Seller and Servicing Agreement]