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MONTANA BOARD OF HOUSING

MORTGAGE PURCHASE AND SERVICING GUIDE

Single Family Bond Program

Dated as of October 2017

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# MORTGAGE PURCHASE AND SERVICING GUIDE

## ARTICLE I

### DEFINITIONS

“*Acquisition Cost*” shall mean the cost of acquiring a Residence from the seller as a completed Residential unit. Acquisition Cost includes the following:

(a) All amounts paid, either in cash or in kind, by the Mortgagor (or a related party or for the benefit of the Mortgagor) to the seller (or a related party or for the benefit of the seller) as consideration for the Residence;

(b) If a Residence is incomplete, the reasonable cost of completing the Residence whether or not the cost of completing construction is to be financed from the Mortgage Loan. For example, where a Mortgagor purchases a building which is so incomplete that occupancy is not permitted under local law, the Acquisition Cost includes the cost of completing the building so that occupancy is permitted; and

(c) Where the residence is purchased subject to ground rent, the capitalized value of the ground rent (using a discount rate specified by the Board).

The term “*Acquisition Cost*” does not include the following:

(a) The usual and reasonable settlement or financing costs. Settlement costs include title and transfer costs, title insurance, FHA or PMI mortgage insurance premium, RD or HUD guarantee fee, VA guarantee fee, survey fees or other similar costs. Financing costs include credit reference fees, legal fees, appraisal expenses, “points” paid by the buyer (but not the seller, even though borne by the mortgagor through a higher purchase price) or other costs of financing the Residence. However, such amounts will be excluded in determining Acquisition Cost only to the extent that the amounts do not exceed the usual and reasonable costs which would be paid by the buyer where financing is not provided through a qualified mortgage bond issue. For example, if the purchaser agrees to pay to the seller more than a pro rata share of property taxes, such excess shall be treated as part of the Acquisition Cost of a Residence;

(b) The value of services performed by the Mortgagor or members of the Mortgagor’s family in completing the Residence. For purposes of the preceding sentence, the family of an individual shall include only the individual’s brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants. For example, where the Mortgagor builds a home alone or with the help of family members, the Acquisition Cost includes the cost of materials provided and work performed by subcontractors (whether or not related to the Mortgagor) but does not include the imputed cost of any labor actually performed by the Mortgagor or a member of the Mortgagor’s family in constructing the Residence. Similarly, where the Mortgagor purchases an incomplete Residence the Acquisition Cost includes the cost of material and

labor paid by the Mortgagor to complete the Residence but does not include the imputed value of the Mortgagor's labor or the labor of the Mortgagor's family in completing the Residence; and

(c) The cost of land which has been owned by the Mortgagor for at least two years prior to the date on which construction of the Residence begins.

“*Act*” shall mean the Housing Act of 1975, constituting Sections 90-6-101 through 90-6-136, inclusive, and Section 2-15-1814, Montana Code Annotated, as it now exists and as it may be amended or supplemented.

“*Appraisal*” shall mean an appraisal performed and communicated according to applicable professional appraisal standards by an appraiser qualified by Montana licensure and any other standards applicable to the particular transaction (such as those which may be imposed by private mortgage insurance which insures the related mortgage, or as may be required by the Board) on a form which meets then current industry standards.

“*Board's Website*” shall mean the official website of the Montana Board of Housing located at <http://housing.mt.gov/>.

“*Borrower*” shall mean the person(s) primarily liable for repayment of the borrowed funds. The borrower(s) executes the Promissory Note, takes title to the residence and signs the Trust Indenture, as well as all loan documents.

“*Cancellation Fee*” shall mean the fee, if any, as set forth in the Terms and Conditions, charged by the Board if a Participant cancels a Mortgage Loan Reservation.

“*Co-Borrower*” shall mean a person(s) liable for repayment of the borrowed funds in addition to the Borrower. The Co-Borrower(s) executes the Promissory Note, takes title to the residence and must also sign the Trust Indenture, as well as all loan documents.

“*Co-signer*” shall mean a person(s) secondarily liable for repayment of the borrowed funds. The co-signer will generally be a non-occupant co-signor and will not be on title to the residence. The co-signor's income, assets, liabilities and credit history are considered only in determining creditworthiness for the Mortgage Loan. The occupying Borrower must have sufficient income to make the payments. While the co-signor does not hold an ownership interest in the residence, it is still liable for repaying the obligation and must sign all loan documents with the exception of the Trust Indenture and the Board Affidavits. A transfer of title to the co-signor after loan closing is a violation of the Board's program requirements and is not allowed.

“*Combined Loan to Value*” (*CLTV*) shall mean the ratio of the principal amounts of both the first mortgage loan and any subordinate loan used for down payment and/or closing costs to the lower of the appraised value or purchase price/Acquisition Cost at the time the Mortgage Loan is originated.

“*Deep Equity Loan*” shall mean a Mortgage Loan with a loan-to-value of 80% or less.

“*E-docs*” shall mean the secure electronic document submittal system used by the Board to accept Mortgage Loan files from the Mortgage Lender through electronic transmission.

“*Federal Consumer Financial Law*” shall mean the Federal Consumer Financial Law as defined in Title X, Section 1002(14) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the rules and regulations promulgated thereunder.

“*Federal Eligibility Requirements*” shall mean the requirements set forth in Section 2.04 hereof and, with respect to Qualified Rehabilitation Loans, Section 2.05 hereof.

“*FHA*” shall mean the Federal Housing Administration.

“*FHLMC*” shall mean the Federal Home Loan Mortgage Corporation or Freddie Mac.

“*FNMA*” shall mean the Federal National Mortgage Association or Fannie Mae.

“*GNMA*” shall mean the Government National Mortgage Association or Ginnie Mae.

“*HUD*” shall mean the United States Department of Housing and Urban Development.

“*Invitation to Participate*” shall mean a letter from the Board to Participants, sent annually, inviting participation in Board programs specifying (i) the program year, (ii) the current interest rate for Mortgage Loans, (iii) the maximum points, if any, which may be charged to the seller or Mortgagor of a Residence, and (iv) the mortgage insurance or guarantee requirements. The letter outlines the application process, identifies the application due date and indicates the Terms and Conditions to be followed by Participants.

“*IRS*” shall mean the Internal Revenue Service.

“*Lender Online Loan Reservation System*” shall mean the Board’s secure web site Participating Lenders use to reserve loan funds for a Borrower. The system allows lenders to enter a loan reservation, check available funds, view loan information, view missing document lists by loan, print Board documents and run reports.

“*Loan to Value*” (*LTV*) shall mean the ratio of the principal amount of the Mortgage Loan to the lower of the appraised value or purchase price/Acquisition Cost at the time the Mortgage Loan is originated.

“*Loan Discount Fee*” shall mean a percentage of the principal amount of the Mortgage Loan as set forth in the Terms and Conditions.

“*Master Servicer*” shall mean the lending institution contracted by the Board to purchase, securitize and service Mortgage Loans to be included in Mortgage Backed Securities, and where appropriate shall also include any subservicers acting on behalf of the Master Servicer.

“*Montana Board of Housing*”, the “*Board*” or “*MBOH*” shall mean the agency of the State of Montana created by the Montana Housing Act of 1975.

“*Mortgage*” shall mean an FHA-, RD-, VA-, HUD or Private Mortgage Insurance approved instrument in the form of a trust indenture in conformity with the Small Tract Financing Act of Montana, Sections 71-1-301 through 71-1-321, both inclusive, Montana Code Annotated, creating a first lien on real property in the State and incorporating the Board’s Uniform Rider to the Trust Indenture annexed hereto as Exhibit A, or such other type of instrument securing a Mortgage Loan as may be specifically approved by the Board for special programs.

“*Mortgage Backed Security*” or “*MBS*” shall mean a security sold to the Board by the Master Servicer representing a 100% beneficial interest in a pool of Mortgage Loans that would otherwise be eligible for the Board to purchase directly.

“*Mortgage Backed Security Program*” shall mean the program established by the Board to finance Mortgage Loans by purchasing securities backed by Mortgage Loans that meet Board criteria and the Federal Eligibility Requirements.

“*Mortgage Loan*” shall mean a loan secured by a Mortgage.

“*Mortgage Purchase Date*” shall mean the date of payment by the Board or the Master Servicer for a Mortgage Loan purchased hereunder.

“*Mortgagor*” or “*Borrower*” shall mean the debtor under a Mortgage Loan.

“*Notice Address*” means:

(a) As to the Board:

301 S. Park, Suite 240  
Post Office Box 200528  
Helena, MT 59620-0528

(b) As to the Participant, the address shown on the Annual Officer’s Certificate of Mortgage Lender.

(c) As to the Master Servicer:

US Bank Home Mortgage  
17500 Rockside Road  
Bedford, OH 44146

(d) As to any subservicer, the address specified in the applicable subservicing agreement between such subservicer and the Master Servicer.

“*Notice of Acceptance*” shall mean the form of notice by which a Participant is notified of acceptance and approval for participation in Board Programs as specified in the Invitation to Participate.

“*Origination Fee*” shall mean a specified percentage of the principal amount of the Mortgage Loans, as set forth in the Terms and Conditions.

“*Participant*”, “*Lender*”, or “*Mortgage Lender*” means banks, trust companies, savings and loan associations, mortgage bankers and other financial institutions authorized to transact business in the State and deemed eligible by the Board to participate as sellers of Mortgage Loans to the Board or the Master Servicer, and/or to service Mortgage Loans for the Board and also includes the Board to the extent permitted by law.

“*PMI*” shall mean Private Mortgage Insurance on conventional mortgage loans from a Board approved provider.

“*Qualified Rehabilitation Loan*” means a Mortgage Loan meeting the requirements specified in Section 2.05 of this Guide.

“*Qualified Veteran*” shall mean a borrower who is a “veteran” within the meaning of 38 U.S.C. Section 101 (as further explained in Exhibit M) who has not previously obtained a loan financed by single family mortgage revenue bonds utilizing the veteran exception set forth in Section 143(d)(2)(D) of the Internal Revenue code of 1986.

“*RD*” shall mean the Rural Development as established under the United States Department of Agriculture (formerly, the Farmers Home Administration).

“*Reservation Fee*” shall mean a percentage of the Mortgage Loan Reservation Amount as set forth in the Terms and Conditions which may be drawn on the account of the Participant and made payable to the Board.

“*Residence*” shall mean a single-family, owner-occupied home together with the land on which it is located in the State and shall include stock held by a tenant-stockholder in an equity cooperative housing corporation. The Residence must have an economic life at least equal to the initial term of the Mortgage Loan. The term “*Residence*” also includes factory-made housing which is permanently affixed to real property owned by the Mortgagor. The determination of whether factory-made housing is permanently affixed to real property shall be made on the basis of the facts and circumstances of each particular case. Land appurtenant to a Residence shall be considered as part of the Residence only if such land reasonably maintains the basic livability of the Residence and does not provide, other than incidentally, a source of income to the Mortgagor. The size of the land shall not be more than allowed in the Small Tract Financing Act and in no case can the value of the land financed exceed 35% of the Mortgage Loan, except under limited circumstances permitted by the Board (see Exhibit K hereto); a Mortgage Purpose Survey will not be accepted. A Residence shall contain not more than one dwelling unit and may be a condominium unit in a structure containing multiple dwelling units. The Mortgagor shall own the Residence in fee simple; leasehold interests with respect to the land for which the effective term of the lease is a minimum of fifty years are also permissible, as are leasehold interests for which the effective term of the lease exceeds fifty years.

“*Rules*” shall mean the program rules of the Board comprising Sections 8.111.101 through 8.111.409, both inclusive, of the Administrative Rules of Montana, as the same may be supplemented or amended from time to time.



“*Servicing Fee*” shall mean a percentage of the outstanding principal amount of the Mortgage Loan which the Participant receives as compensation for its servicing activities, as specified in the Term and Conditions.

“*Servicing Release Fee*” shall mean the amount paid to the originating lender by the Board or Master Servicer to purchase the rights to service a Mortgage Loan, as specified in the Term and Conditions.

“*State*” shall mean the State of Montana.

“*Targeted Area*” shall mean areas that are defined in Section 143 of the Internal Revenue Code of 1986, as amended, to include census tracts with population and income characteristics specified and other areas of chronic economic distress meeting criteria set forth and approved as targeted areas by the Secretaries of the United States Department of Treasury and Department of Housing and Urban Development. Such areas are designated by the Board in accordance the Act and Rules and specified in the Terms and Conditions.

“*Terms and Conditions*” shall mean the document that outlines the mortgage rate, permissible fees and general eligibility requirements for the homebuyer and property to qualify for each Board loan program. Terms and Conditions are updated regularly, and the current version is posted on the Board’s Website.

“*Trustee*” shall mean the designated depository of the Board.

“*VA*” shall mean the Department of Veterans Affairs (formerly the Veterans Administration).

“*Whole Loans*” shall mean Mortgage Loans that meet all of the Federal Eligibility Requirements and the requirements of the Board to qualify for the mortgage revenue bond program, but are not securitized into an MBS, and are purchased and held by the Board.

## ARTICLE II

### PURCHASE OF MORTGAGE LOANS BY THE BOARD

#### Section 2.01. *Mortgage Loan Reservation Procedures.*

(a) *Mortgage Pool Fund.* All proceeds available to the Board in connection with the purchase of Mortgage Loans hereunder will be reserved in a pool and committed to Participants for the Mortgagors on a loan-by-loan, first-come, first-served basis; provided, however, if the Board, in its sole judgment, determines that the provisions of this Section 2.01 need to be changed, it reserves the right at any time to modify such provisions and such change shall be effective five (5) days after written or e-mail notification of change has been sent by the Board to the Participant.

(b) *Mortgage Loan Reservation.* Mortgage Lenders reserve funds for eligible loans electronically using the Lender-On-Line portal. In addition to this submission, a copy of (1) the Borrower Stat Sheet (2) Homebuyer education certificate if applicable, and (3) a sponsor approval letter for set-aside program loans, must be submitted via Lender-On-Line. An exception process is in place for some set-aside programs loans that require staff review prior to reservation, or for loans with repeat purchasers. Under the exception process, lenders fax reservation requests to the Board and will receive response from MBOH within five (5) business days. The order of reservations will be determined by the date and time submitted. Each reservation shall be individually submitted.

(c) *Mortgage Loan Confirmation.* The Board intends to confirm reservations within five business days. NOTE: a loan is not committed until MBOH staff have reviewed the reservation and approved it in Lender-On Line. The Board's reservation of funds to acquire the Mortgage Loan shall begin on the date the Board approves and commits the lender's request for funds. The expiration date of the reservation will be set forth on Lender Online. For each confirmed reservation, the Board will assign a Montana Board of Housing Reservation loan number. This number shall be permanently used by the Board and the Participant to identify the Mortgage Loan Reservation and the acquired Mortgage Loan. In the event the Mortgage Loan is not acquired by the Board or its agent within the applicable time period, the reservation will expire. In such a case the Participant may be required to pay a Cancellation Fee to the Board. Such funds previously reserved will be made available for use by a different Participant/Mortgagor. In the event the reservation expiration date shall occur on a weekend or holiday, such reservation expiration date shall be the next business day of the Montana Board of Housing.

(d) *Mortgage Loan Extension.* Upon request, the Participant may be approved for an extension of time to deliver a Mortgage Loan beyond the original date of reservation expiration. In order to secure an extension, the Participant must provide the estimated delivery date of the Mortgage Loan. For each 30-day extension, the purchase price of the Mortgage Loan will be discounted at a percentage rate set forth in the Terms and Conditions based on the outstanding principal amount of such loan purchased by the Board. Such request for extension may be submitted by E-mail by the Participant for that particular Mortgagor. The request must be received by the Board a minimum of three (3) Business Days before the date of the original reservation expiration date. Participants are advised to closely monitor their own reservation pipeline via Lender-On-Line, including the expiration dates, and to forward applicable extension documentation when due. The Board will not notify Participants of reservation expirations except at the Board's sole discretion.

(e) *Modification of Mortgage Loan Reservations.* Generally, Participants may not modify or substantially change Mortgage Loan reservations once a confirmed reservation is made. Should the information provided to the Board regarding a specific reservation be incomplete or inaccurate, the Participant must cancel the reservation and forfeit any Reservation Fee or pay an applicable Cancellation Fee. Such funds previously reserved for that particular Mortgagor will be made available for use by a different

Participant and Mortgagor. Participants are at considerable risk regarding whether funds or the previously-applicable interest rate will be available for a new reservation. Participants should exercise great care to be sure that information provided to the Board is complete and accurate.

Circumstances may arise in which the Board may consider and approve a modification or correction of the information maintained on "Lender On Line". To request such change or correction, the Participant may inform the Board by telephone or by e-mail. If approved, the Participant will be required to immediately submit a letter, or E-mail requesting a modification. In the event a letter or E-mail is not provided by the Participant, the request for a modification or correction is void. A cancellation fee will be assessed, and the funds will be made available to a different Participant and Mortgagor.

(f) *Cancellation of Confirmed Mortgage Loan Reservations.* The Participant shall immediately notify the Board if the Mortgage Loan cannot be completed and financed by the Board, so the mortgage funds may be made available for use by another eligible Mortgagor. No substitutions may be made by the Participant of either Mortgagors or properties. To cancel a Mortgage Loan reservation, the Participant shall notify the Board in writing or by e-mail. The cancellation request needs to list the Mortgagor's name, MBOH Reservation Loan Number, the Reservation Loan amount, the reservation fee, and extension fee, if applicable. Information should be provided about the reason for the cancellation (such as a copy of the appraisal). The cancellation request will be confirmed by telephone or via email to the Participant. The loan reservation will be cancelled in Lender On Line and a cancellation fee assessed by the Board.

(g) *Reservation Fee.* The Board does not charge a fee for making reservations at this time but reserves the right to start doing so at any time.

(h) *Origination Fee.* For each loan delivered for financing by the Board, the Participant may collect an Origination Fee from the Mortgagor or from the Board (as set forth in the Terms and Conditions).

(i) *Loan Discount Fee.* For each loan delivered for financing by the Board, the Participant may collect a Loan Discount Fee from the Mortgagor, the seller of the Residence or the Board (as set forth in the Terms and Conditions).

(j) *Purchase Price of Mortgage Loans.* Mortgage Loans will be financed in accordance with the Mortgage Loan Submission and Purchase Schedule at a price, as set forth in the Terms and Conditions. The purchase price of such Mortgage Loans not delivered for purchase by the Board within 30 days following execution of the note by the Mortgagor will be reduced by an additional percentage, as set forth in the Terms and Conditions, for each 30 days the loan is not delivered for purchase.

(k) *Servicing Fee.* As compensation for servicing each loan purchased by the Board, the Participant shall receive a Servicing Fee (as set forth in the Terms and Conditions); provided, however, that the Participant shall deduct the monthly Servicing

Fee only when the entire amount of the Mortgagor's monthly payment of principal and interest has been paid. Such fee is calculated based on the monthly interest collected.

Section 2.02. ***Purchase.***

(a) The Participant shall commence to make Mortgage Loans promptly and shall tender such Mortgage Loans for purchase by the Board within 30 days following execution of the note by the mortgagor. The Participant will deliver the original signed Promissory Note endorsed to the Board, the original recorded Deed of Trust, and the original recorded Assignment of Trust Indenture/Deed of Trust to the Board at the address listed in the Terms and Conditions. The balance of the purchase file will be delivered to MBOH via Edocs. This file must contain the documents in the order listed on the Loan Submission Voucher form found on the Board's Website. The file will be reviewed and the Participant notified via Lender Online of any exceptions. Participants must satisfy all exceptions by submission of documentation via Lender OnLine. The loan must be approved for purchase within 45 days after closing. Failure to deliver any such loan, with all exceptions cleared within 45 days after closing, will result in penalty fees as set forth in the Terms and Conditions. The Board may return the purchase package to the originating Participant under the following circumstances:

- (i) if initial package is missing any of the following; the recorded deed of trust, the original signed note, and the original recorded or Clerk and Recorder's certified copy of the executed Assignment of Trust Indenture to MBOH ;
- (ii) if lender fails to send in all of the missing documents at one time, i.e., MBOH won't accept the package if the lender sends in missing documents piecemeal;
- (iii) if missing documents for purchase package are delayed by more than 45 days.

Section 2.03. ***Mortgage Loan General Requirements.***

(a) A Mortgage Loan to be financed by the Board must comply with the following conditions:

- (i) It must comply with the Federal Eligibility Requirements set forth below in Section 2.04 and the Mortgagor and seller of the Residence must comply with all requirements specified in Exhibits B and C hereto and as updated on the Board's Website.
- (ii) It shall be made to a person or family of lower income as established by the Internal Revenue Code of 1986, as amended (the "Code"), and

as established by the Board as set forth in the Terms and Conditions in effect and Income and Purchase Limits, as posted on the Board's Website.

(iii) It shall be insured, as set forth in the Terms and Conditions, by the FHA or by HUD to the extent of the full outstanding principal of the Mortgage Loan or by PMI to the extent required by the Board, qualify as a Deep Equity Loan or be guaranteed by RD to 90% of the outstanding principal or guaranteed by the VA at whatever percent is equal to the maximum guarantee allowable by law at the time of Mortgage Loan origination, with no consideration given to prior entitlements previously used by a veteran and not restored as a result of the exclusion provision. The liability on the guarantee is reduced or increased pro rata with any reduction or increase in the amount of the indebtedness, but will in no event exceed the original amount of the guarantee. Borrowers can finance the FHA Upfront Premium, the VA guarantee fee, the RD guarantee fee or the PMI Upfront Premium to the extent permitted by such insurer or guarantor. There is no cash back to the borrower. On a RD guaranteed loan, the borrower must provide a minimum investment of their own resources toward down payment and/or closing costs as set forth in the Terms and Conditions.

(iv) It shall provide for complete amortization at maturity through substantially equal monthly payments of principal and interest.

(v) It shall have a term not to exceed thirty (30) years or such other term as may be set forth in the applicable Terms and Conditions.

(vi) It shall bear interest at the rate specified in the applicable Terms and Conditions.

(b) All fees, charges and other amounts borne by the Mortgagor which are attributable to the Mortgage Loan shall be limited as follows:

(i) No points, Reservation Fees, Origination Fees or similar charges attributable to the Mortgage Loan may be borne by the mortgagor or the seller of the Residence except an amount equal to no more than the amount or percentage set forth in the applicable Terms and Conditions.

(ii) All costs incurred by the Mortgagor in acquiring the Residence and obtaining the Mortgage Loan shall be reasonable and shall not exceed the usual costs incurred by a person acquiring like property where financing is not being provided through the Board. Other costs, which are paid directly to a third party not controlled by the Participating Lender include: credit report fees, survey fees, appraisal fees, title fees, title insurance, legal fees and other similar costs. Lender fees such as application fees, administrative fees, underwriting fees, processing fees and document preparation fees cannot exceed a total of the amount specified in the Terms and Conditions.

(iii) The Origination Fee, as set forth in the Terms and Conditions.

No other fees, charges or other remuneration shall be directly or indirectly received by the Participant in making any Mortgage Loan. Late charges equal to a percentage of each monthly payment of principal and interest, as set forth by industry standard, may be imposed for payments more than 15 days delinquent.

(c) Each first-position Mortgage Loan shall provide for monthly escrow payments in an amount sufficient to enable the Participant to pay when due all real property taxes and assessments, hazard and casualty insurance premiums (at least to the extent such insurance is required herein) and mortgage insurance premiums, if any. The Board or its agent shall have the right to pay any of said obligations when due and unpaid and the amount thereof shall be added to the debt secured by the lien of the Mortgage.

(d) Payments of principal and interest and escrow payments shall commence not later than the first day of the second month following the Mortgage closing date for each Mortgage Loan. Monthly payments will be due on the first day of each month.

(e) The Mortgage Loan note, the Mortgage, the Trust Indenture and other Mortgage Loan origination documentation shall be executed on forms approved by Fannie Mae or Freddie Mac. Participants may utilize their own word processing equipment to generate the forms approved by the Board, but only if the words and general formatting of the forms are the same as those approved by the Board for the specific loan program. If any question is raised at any time as to the propriety of any form generated by a Participant as a result of the Participant not using the forms approved or provided by the Board, the Board may, in its absolute discretion, if the Participant does not cure any defect or other problem with respect to the Participant's generated form (which shall be solely at the cost and expense of the Participant), require the Participant to repurchase the affected Mortgage Loan as provided in Section 2.06 hereof, and in any event the Participant hereby agrees to indemnify the Board and hold it harmless for any costs, expenses or damages it may incur with respect thereto.

(f) The Participant shall include in any reservation to make Mortgage Loans entered into with a builder or developer a certificate by such builder or developer that it will not increase the purchase price charged for any dwelling financed with the proceeds of a Mortgage Loan because such Mortgage Loan is available with respect to such dwelling and bears a below market interest rate. Such covenant shall be for the benefit of and enforceable by the Board.

#### Section 2.04. *Federal Eligibility Requirements.*

In addition to the conditions set forth above, in order to be eligible for financing by the Board from the proceeds of bonds, Mortgage Loans must strictly comply with the Federal Eligibility Requirements described in this Section (and, with respect to Qualified Rehabilitation Loans, also those of Section 2.05). If the documentation delivered at the time of closing does not indicate strict compliance, the Mortgage Loan will not be purchased.

If the Board subsequently discovers that a Mortgage Loan does not comply with the Federal Eligibility Requirements, it may exercise its right to have the originating Participant

repurchase the Mortgage Loan. The Participant may then pursue its remedies under the Mortgage Loan or otherwise, by declaring an event of default to have occurred or increase the interest rate under the terms of the Uniform Rider to Trust Indenture.

Federal tax law requires the Board to cure defects in all Mortgage Loans. The Board has no power to waive or modify the Federal Eligibility Requirements.

(a) Residence Requirements.

(i) At the time the Mortgage Loan is executed, the Residence must reasonably be expected to become the principal Residence of the Mortgagor within a reasonable time after the financing is provided. This requirement may normally be met if the Mortgagor executes an affidavit of intent to use the Residence as a principal Residence within 60 days after the financing is provided. Whether a Residence is used as a principal Residence depends upon all the facts and circumstances of each case, including the good faith of the Mortgagor. The Mortgagor's Affidavit and Certification attached as Exhibit B hereto contains a representation to this effect as does the Uniform Rider to Trust Indenture attached as Exhibit A hereto. Unless the Participant is aware of other facts which would produce doubt as to the truth of these representations, they may be relied upon unless the Participant knows or has reason to know that the affidavits are false. The Participant will, of course, be deemed to have knowledge of all information contained in the loan file. Care should be taken to make sure there is no inconsistency with the affidavit before the loan is closed. A Residence which is primarily intended to be used in a trade or business shall not satisfy the Residence requirement. Any use of a Residence in a trade or business which qualifies under Section 280A of the Code for a deduction allowable for certain expenses incurred in connection with the business use of a home shall not disqualify a Residence from meeting the Residence requirement unless more than fifteen percent (15%) of the total area of the Residence is reasonably expected to be so used. Further, a Residence used as an investment property or a recreational home does not satisfy the Residence requirement. Although the Board may be able to issue advisory letters on this question in cases which seem clear enough at the time, there is still some risk of a subsequent interpretation by the U.S. Treasury which would necessitate a buyback. Examples are as follows:

*Example 1.* A condominium unit at a ski resort is recreational and would not normally be eligible. However, certain Mortgagors who have full-time, year-round jobs at the resort may be able to demonstrate use as a "principal residence."

*Example 2.* Lakefront property or property in a resort area may or may not be recreational. Extreme caution should be exercised by originating Mortgage Lenders in evaluating the other surrounding facts and circumstances.

*Example 3.* A combination barbershop and Residence is a Residence used in a trade or business and is eligible for a deduction under Section 280A of the Code. If the barbershop accounts for more than fifteen percent (15%) of the total building area, the property will not be eligible.

*Example 4.* A parcel containing two or three lots which is capable of being sold or rented separately from the portion used as a Residence will normally be considered as investment property even if less than one acre is involved.

(ii) No part of the proceeds of the Mortgage Loan can be used to finance anything other than the Residence. Any land appurtenant to the Residence which is not necessary to maintain the basic livability of the Residence may not be financed with the proceeds of the Mortgage Loan. Items of personal property such as appliances, furniture and the like which under Montana law are not fixtures may not be financed with the proceeds of the Mortgage Loan. (When multiple lots are involved, a plat or map must be submitted to show that all lots are needed for basic livability as defined in Section 143 of the U.S. tax code.)

(b) Three-Year Requirement.

(i) Except for Residences located in Targeted Areas listed in the Terms and Conditions, and except for Mortgage Loans made to a Qualified Veteran, or for certain Qualified Rehabilitation Loans as described in Section 2.05 hereof, the Mortgagor and any other adult intending to live in the Residence must have had no present ownership interest in a principal Residence at any time during the three-year period prior to the date on which the Mortgage Loan is executed. For purposes of the preceding sentence, the Mortgagor's interest in the Residence with respect to which the financing is being provided shall not be taken into account. In the event that there is more than one Mortgagor with respect to a particular Residence, each of such Mortgagors must meet the three-year requirement. A person who is liable under a note secured by the Mortgage but who does not have a present ownership interest in a Residence subject to the Mortgage need not meet the three-year requirement. For example, where a parent of a home purchaser co-signs the note for a child but the parent takes no interest in the Residence, it is not necessary that the parent meet the three-year requirement since the parent is not a Mortgagor of the Residence.

Generally, prior ownership of factory-made housing, including a manufactured home on a chassis that is not permanently affixed to land owned by the Mortgagor, will not disqualify a Mortgagor. However, due to the difficulty of establishing the operative facts, Participants should not accept applications where a Mortgagor owned the land on which factory-made housing was located unless there is clearly established proof of the personal property character of the manufactured home.



(ii) Examples of interests which constitute present ownership interests are the following:

- (A) A fee simple interest in the form of a deed;
- (B) A joint tenancy, a tenancy in common or tenancy by the entirety, such as co-ownership by spouses;
- (C) The interest of a tenant-shareholder in a cooperative;
- (D) A life estate under a parent's will or trust or otherwise;
- (E) A land contract (i.e., a contract pursuant to which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time); and
- (F) An interest held in trust for the Mortgagor (whether or not created by the Mortgagor) that would constitute a present ownership interest if held directly by the Mortgagor.

(iii) Examples of interests which do not constitute present ownership interests are the following:

- (A) A remainder interest, such as an interest which is subject to a life estate held by someone else;
- (B) A lease with or without an option to purchase;
- (C) A mere expectance to inherit an interest in a principal Residence;
- (D) The interest that a purchaser of a Residence acquires on the execution of a purchase contract; and
- (E) An interest in other than a principal Residence during the previous three years.

(iv) The following are intended to broadly illustrate the foregoing rules:

*Example 1.* A separated or divorced person who was a co-owner of a house during the three-year period is not eligible.

*Example 2.* Sons or daughters who inherit a house are eligible so long as they did not occupy the house as a principal Residence after the death of their parent.

*Example 3.* A Mortgagor who occupied a principal Residence under a contract-for-deed will not qualify.

*Example 4.* A Mortgagor who leased a principal Residence with an *option* to buy is not disqualified. However, a lease for a term of more than 24 months may fail to satisfy the New Mortgage Requirement.

*Example 5.* A Mortgagor who owned a mobile home, took the wheels and axle off and installed it on a leased pad in a mobile home park is not disqualified, as long as the mobile home was not permanently affixed to the land.

(v) The Mortgagor's Affidavit and Certification attached hereto as Exhibit B contains representations of compliance with the three-year requirement and income requirement and also requires the attachment of the Mortgagor's tax returns for the last three years (unless they were not required to be filed or the borrower is purchasing in a targeted area). The Mortgagor must provide copies of such tax returns as filed with the IRS or copies of such returns as certified by the IRS in accordance with the procedures set forth in Section 6103 of the Code. A copy of IRS Form 4506 will be provided upon request. The tax returns must show no deductions for interest or real estate taxes on a principal Residence. The Participant is entitled to rely on the affidavit and tax return unless there is reason to believe the affidavit is false.

The following are examples of the Three-Year Requirement:

*Example 1.* A Mortgagor supplies tax returns for calendar years 2016, 2015 and 2014 but has not yet filed a return for 2017. The returns show no deductions for real estate taxes or interest on home mortgages. The Mortgage Lender has no reason to believe the Mortgagor owned a principal Residence during 2017. The Three-Year Requirement is satisfied.

*Example 2.* The tax returns show deductions for interest and taxes on a dwelling that the Mortgagor swears in the affidavit was an investment property. The Mortgage Lender has no reason to believe the affidavit is false, i.e., the Mortgagor has shown that he had another principal Residence that he rented. The Three-Year Requirement is satisfied.

(c) *Purchase Price Limits.* The Acquisition Cost of each Residence secured by a Mortgage Loan must not exceed the purchase price limits for the county, or portion thereof, in which the Residence is located. Current Purchase Price limits can be found on the Board's Website. The purchase price limits for new Residences are applicable to Residences which have not been previously occupied, and the purchase price limits for previously occupied Residences are applicable to Residences which have been previously occupied. A person who temporarily rents or occupies a new house while financing for the purchase is being arranged will normally be considered to be purchasing a new Residence. The Board reserves the right to revise the purchase price limits from time to time to reflect more recent statistical information or changes in federal "safe harbor" figures by notice to the Participants and posting to the Board's Website. The

determination whether a particular Residence meets the purchase price limits shall be made on the basis of the purchase price limits for new or existing Residences, in effect as of the date on which the commitment to provide the financing to the Mortgagor is made or, if earlier, the date of purchase of the Residence.

The following interpretive guidelines will be applied by the Board in determining “Acquisition Cost”:

- (i) all unpaid special improvement district assessments are included;
- (ii) all amounts of “owner financing,” such as second mortgages and deferred payments of any kind, are included;
- (iii) the cost of land which has not been owned by the Mortgagor for at least two years prior to the date on which construction of the Residence begins is included;
- (iv) all amounts paid to the seller by or on behalf of the Mortgagor are included;
- (v) items of personal property, such as refrigerators, stoves, washers and dryers, are not included, but fixtures such as wall-to-wall carpeting, curtain rods and light fixtures are included; and
- (vi) estimates for the costs of completing uncompleted areas of the Residence should be included, but the cost of finishing rooms or areas which are normally left unfinished, such as basement areas, are not necessarily included.

The purchase price requirement is normally satisfied by obtaining a Mortgagor’s Affidavit and Certification and a Seller Affidavit and Certification attached as Exhibits B and C hereto. These affidavits may be relied upon to satisfy the purchase price requirement, provided the Participant has no reason to believe the affidavits are false. All loan documents should be reviewed to make sure there is no inconsistency prior to loan origination.

(d) *Income Requirement.* The maximum family income for all Mortgagors in Targeted and non-Targeted Areas, as the case may be, has been established by the Board as set forth and published on the Board’s Website.

Family income of the Mortgagor must be determined in a manner consistent with determinations of lower-income families under Section 8 of the United States Housing Act of 1937, as amended. For purposes of applying the federal income requirements, the “Gross Annual Income” of a Mortgagor is the Mortgagor’s annualized gross family income. Annualized gross family income includes any and all income of the Mortgagor and any other person who is expected to both live in the financed Residence and to be secondarily liable on the Mortgage Loan. Exhibit E, the “Income Determination Guide,” is provided to aid Participants in determining income.

(e) *New Mortgage Requirement.* The Mortgage Loan must be made to Mortgagors who did not have a Mortgage (whether or not paid off) on the Residence securing the Mortgage Loan at any time prior to the execution of the Mortgage Loan. An existing Mortgage shall include deeds of trust, conditional sales contracts, pledges, agreements to hold title in escrow and any other form of owner financing, but shall not include the refinancing or replacement of (1) construction period loans or (2) bridge loans or temporary initial financing. Generally, temporary initial financing is any financing which had a term of 24 months or less.

The following are examples of this requirement:

*Example 1.* An applicant purchased land in 2012 and in 2014 obtains a loan to construct a house and upon completion of the house seven months later applies for a Mortgage Loan. The Mortgage Loan would meet the New Mortgage Requirement.

*Example 2.* An applicant rents a house for 18 months with an option to purchase it as soon as suitable financing is available. This arrangement does not violate the New Mortgage Requirement.

The Mortgagor's Affidavit and Certification and the Seller Affidavit and Certification attached as Exhibits B and C hereto contain representations as to the new mortgage requirement which may be relied upon unless there is reason to believe the affidavits are false.

(f) *Mortgage Loan Recapture.* The Participant shall provide to each Mortgagor at the time of the Mortgagor's application for a Mortgage Loan, the Recapture Notice to Mortgagor as set forth in Exhibit D-1 hereto. On or prior to the Mortgage Loan closing date, each Mortgagor shall execute and return to the Participant the Notice to Mortgagor of Maximum Recapture Tax and Method to Compute Recapture Tax on Sale of Home as set forth in Exhibit D-2 hereto.

(g) *Assumptions.* No assumptions will be permitted without prior written Board approval and the assumer's compliance with the federal tax law rules hereinafter described. Due to the administrative difficulties in assuring compliance, the Uniform Rider to Trust Indenture attached hereto as Exhibit A must be appended to and made a part of each Mortgage Loan. The Uniform Rider contains a broad Due-on-Sale Requirement which effectively precludes all assumptions. The Mortgagors agree that the indebtedness of the Mortgage Loan may be accelerated and the interest rate thereon increased if, among other things, the Mortgagor sells, rents or otherwise fails to occupy the Residence as a principal Residence. Present Board Policy is to consent to assumptions when it is satisfied that the Residence requirement, the three-year requirement, the purchase price requirement, and the income requirement are met with respect to such assumption. Assumptions must also meet the requirements of the insurer/guarantor agency on the loan.

The following are examples of this requirement:

*Example 1.* The Due on Sale Requirement is breached if the original mortgagor is transferred to another town and rents the Residence to another person.

*Example 2.* The Due on Sale Requirement is breached if the original mortgagor defaults on the Mortgage and it is foreclosed.

*Example 3.* The Due on Sale Requirement is not breached if the original mortgagors are divorced and one of the parties continues to own the Residence.

*Example 4.* The Due on Sale Requirement is breached if the original mortgagor dies and leaves the Residence to his heirs.

*Example 5.* The original mortgagor buys a new house from a builder during a time when the Purchase Price Requirement for new residences is \$255,574. He is subsequently transferred and wishes to sell the house subject to the mortgage to a purchaser who meets the Three-Year Requirement and the Residence Requirement. However, the selling price is higher than the applicable Purchase Price Requirement of \$255,574. The Board is not allowed to consent to this assumption under federal tax law.

(h) *Compliance with Federal Requirements.* Notwithstanding compliance with the contractual requirements set forth above, the Board reserves the right to decline to finance Mortgage Loans if in the Board's sole determination such Mortgage Loans do not meet the requirements of Section 143 of the Code. The Participant agrees to provide the Board with information regarding Mortgage Loans when requested by the Board to comply with the requirements of Section 143 of the Code, and the regulations promulgated thereunder.

(i) *Due Diligence Requirements.* The Participant shall interview the Mortgagor to explain the federal requirements and perform the following investigations with respect to each Mortgage Loan originated for sale to the Board in accordance with this Guide:

(i) Obtain and submit true and correct copies of federal income tax returns filed with the Internal Revenue Service for the preceding three years if property is not in a targeted area, or, in lieu thereof, a certification that the Mortgagor and/or household member(s) were not required to file a federal income tax return during one or all of the preceding three years.

(ii) Obtain the income certificates and verifications.

(iii) Obtain an affidavit from the seller of the Residence as to the Acquisition Cost of the Residence in the form to be provided by the Board.

(iv) Examine the affidavit of Mortgagor's eligibility, the federal tax returns, credit reports, residential appraisal report and affidavits pertaining to Acquisition Cost and income limitation and all other pertinent information obtained in connection with the origination of the Mortgage Loan in order to determine that sufficient documentary evidence exists to support the conclusion that the Federal Eligibility Requirements will be met.

(v) Take such other action as may be reasonably requested by the Board to investigate the truth and accuracy of the matters set forth in this Section.

**Section 2.05 *Qualified Rehabilitation Loans—Federal Eligibility Requirements.***

(a) In addition to Mortgage Loans meeting the requirements of Section 2.03 and 2.04 above, as well as those of the relevant Invitation to Participate, Terms and Conditions and Notice of Acceptance, the Board may, from time to time, agree to finance Qualified Rehabilitation Loans if they also comply with this Section.

(b) A Qualified Rehabilitation Loan is a Mortgage Loan made for the purpose of rehabilitating a Residence in addition to refinancing any existing mortgage. For purposes of this subparagraph, rehabilitation includes renovation, restoration or reconstruction. In general, the rehabilitation must materially extend the useful life of the Residence, significantly upgrade its usefulness, or preserve it in a manner that significantly improves its condition or enhances its historic value. A rehabilitation may vary in degree from extensive reconstruction of a Resident's major structural components to the cure of an accumulation of major disrepairs. It may also include renovation, alteration or remodeling for the conversion of a structurally sound building to a design and condition required for residential use. Cosmetic or recreational improvements alone, however, do not qualify as a rehabilitation. A Qualified Rehabilitation Loan must meet all of the following requirements:

- (i) First Residency Requirement (defined hereinafter);
- (ii) 20 Year Requirement (defined hereinafter);
- (iii) 75% External Wall Requirement (defined hereinafter);
- (iv) 25% Expenditure Requirement (defined hereinafter);

(v) The Federal Eligibility Requirements set forth in Section 2.04, other than the Three-Year Requirement and the New Mortgage Requirement;

(vi) A commitment for a Qualified Rehabilitation Loan from the Participant must be issued to a Mortgagor or builder prior to the start of the rehabilitation. The Participant making the Mortgage Loan must process and monitor the rehabilitation of the structure, making at least two (2) inspections, depending on the scope of the project, and more where they may be required, to assure compliance with normal construction lending practices; and

(vii) The other requirements for Mortgage Loans set forth in Sections 2.03 and 2.04 above, as well as those of the relevant Invitation to Participate, Terms and Conditions and Notice of Acceptance.

(c) With respect to the Purchase Price Limits of the Federal Eligibility Requirements of Section 2.04(c) hereof, the Purchase Price Requirement of a Qualified Rehabilitation Loan is met if the Mortgagor's adjusted basis in the Residence (under federal tax laws) as of the completion of the rehabilitation, including the land on which the Residence is located and the rehabilitation expenditures incurred (whether such expenditures are financed with proceeds of the Qualified Rehabilitation Loan or not, and including all financing and other fees necessary to the rehabilitation so long as such expenditures and fees are expended during the rehabilitation of the Residence and are reasonably related to the rehabilitation of the Residence), do not exceed the purchase price limits as published by the Board for existing Residences.

(d) The First Residency Requirement is met if the Mortgagor (or if there is more than one Mortgagor, at least one Mortgagor) to whom the Qualified Rehabilitation Loan is made is the first resident in the building after the rehabilitation was completed. The loan can be made either in connection with the rehabilitation and the refinancing of an existing loan or in connection with the acquisition of a Residence that has been rehabilitated. This requirement will normally be met if the Mortgagor executes the Mortgagor's Affidavit and Certification and is able to provide satisfactory documentary evidence to demonstrate that the Mortgagor is or will be the first occupant since the building was rehabilitated.

(e) The 20-year Requirement is met if at least 20 years have passed between the date the building was first used and the date on which physical work on rehabilitation begins. Compliance with this requirement will normally be by reference to documentation provided by the Mortgagor and the Affidavit provided by the Appraiser (Exhibit I). The Board reserves the right to request further verification if it considers the issue in doubt.

(f) The 75% External Wall Requirement is met if 75% or more of the existing external walls (as measured by the total area of the existing external walls) are retained in place as external walls in the rehabilitation process. . An external wall is a wall with one face exposed to the weather or earth. A common wall is not an external wall. An external wall is retained in place even though it is covered (e.g., with new siding) or reinforced. An external wall is retained in place notwithstanding that the existing doors and windows in an external wall are replaced or enlarged. An existing external wall is not retained in place, however, if the supporting elements of the wall are replaced. The Qualified Rehabilitation Loan Affidavit (see Exhibit H) of the Mortgagor and Participant must contain a sketch or photographs of the building showing the extent of the rehabilitation and the effect on the external walls.

(g) The 25% Expenditure Requirement is met if the expenditures for rehabilitation are 25% or more of the Mortgagor's adjusted basis in the Residence (including the land on which the Residence is located) under federal tax laws. The

adjusted basis to the Mortgagor is the Mortgagor's adjusted basis as calculated pursuant to the Qualified Rehabilitation Loan Affidavit (see Exhibit H). The Mortgagor's adjusted basis shall be determined as of the date of completion of the rehabilitation or, if later, the date the Mortgagor acquires the Residence. Rehabilitation expenditures include those for renovation, restoration or reconstruction of the Residence. The amounts expended by the Mortgagor for rehabilitation include all amounts expended for rehabilitation regardless of whether the amounts expended were financed with the proceeds of the Qualified Rehabilitation Loan or from other sources and regardless of whether the expenditure is a capital expenditure so long as the expenditure is during the rehabilitation of the Residence and is reasonably related to the rehabilitation of the Residence. It is recommended that a contractor approved by the Participant be substantially involved with the rehabilitation of a property. The value of services performed by the Mortgagor or members of the Mortgagor's family will not be included in determining the rehabilitation expenditures for purposes of the 25% test. It is the Board's recommendation that the borrower obtain three bids outlining the scope and the cost of the rehabilitation expenditures. Where the Mortgagor is a licensed contractor, the Participant may waive the three-bid requirement. The relevant expenditures must be evidenced by copies of paid invoices attached to a copy of the Rehabilitation Loan Affidavit (see Exhibit H) and retained in the Participant's file.

Subject to meeting the requirements set forth above, the following examples apply to Qualified Rehabilitation Loans:

*Example 1:* An attached garage for storage of car and other personal items can be included as an item of rehabilitation. Purely recreational items such as saunas, swimming pools, stables and the like do not qualify.

*Example 2:* A homeowner modernizes his residence by redoing the kitchen and bathrooms and adding an addition for a new room. The rehabilitation expenses, as well as the outstanding principal balance of any existing mortgage, can be financed with a new Qualified Rehabilitation Loan.

*Example 3:* A builder/developer buys an older home, replaces the electric, plumbing and heating system, and resells the house. The buyer has recently sold another house and wishes to use the rehabilitated house as a principal residence. The buyer is eligible to obtain a Qualified Rehabilitation Loan and does not have to meet the Three-Year Requirement providing the buyer meets the Income Requirement.

*Example 4:* A homeowner purchased a principal residence in 1973 for \$21,000 and has since had the home repainted several times, for a total cost of \$1,800 and no other repairs or maintenance has been done. The homeowner's adjusted basis before rehabilitation is \$21,000, and at least \$7,000 must be spent for rehabilitation in order to meet the 25% Expenditure Requirement. Repainting is considered maintenance and not normally considered a capital expenditure so it does not increase the homeowner's adjusted basis.



*Example 5:* The homeowner in Example 4 spends \$5,000 adding an additional bedroom and another \$3,000 on wallpaper, interior and exterior paint and wall-to-wall carpeting. All of these expenditures are Rehabilitation expenses even if some would be considered maintenance items if performed individually.

Section 2.06. ***Remedies.***

(a) The Participant shall repurchase any Mortgage Loan purchased by the Board in accordance with this Guide for an amount equal to (i) the unpaid principal balance of, plus accrued interest on, the Mortgage Loan, (ii) the aggregate amount of any advances made by the Board for the account of the Mortgagor and interest thereon at the Mortgage Loan interest rate, and (iii) any attorney fees, legal expenses, court costs or other expenses which may have been incurred or expended by the Board in connection with said Mortgage Loan, upon notice by the Board if any of the following shall occur:

(i) if the hazard insurance policy limit of liability page listing the Board as first mortgagee on loss payable clause, the mortgagee title insurance policy or the original FHA or HUD 184 mortgage insurance certificate or VA or RD guaranty certificate or evidence of PMI insurance acceptable to the Board is not delivered within 90 days after purchase of the Mortgage Loan by the Board; Note: Lenders may be charged \$50 per document per month, to be netted against the proceeds of future new loan purchases, for final documents not delivered within 90 days after purchase of the Mortgage Loan by the Board;

(ii) if the Board determines, at any time, with respect to such Mortgage Loan that any representation herein was untrue when made (including any information with respect to such Mortgage Loan ), any warranty or term hereunder has been breached, or a misstatement of a material fact by the Participant exists in any of the documents for such Mortgage Loan listed in the applicable submission voucher;

(iii) if any mortgage insurance or guaranty with respect to such Mortgage Loan shall lapse due to negligence on the part of the Participant;

(iv) if the Board suffers, or is threatened with a material loss by reason of the misfeasance, nonfeasance or malfeasance of the Participant;

(v) if the Board determines in its sole discretion at any time that the requirements of Section 143 of the Code, with respect to the Mortgage Loans, have not been complied with, whether or not the Participant is in any way responsible for such noncompliance; and

(vi) if a Mortgage Loan is more than 30 days delinquent within the first 90 days of scheduled payments, or is more than 60 days delinquent within the first 180 days of scheduled payments.

Any such repurchase by the Participant shall take place on such date as the Board may specify in its notice to the Participant of the occurrence of one or more of the foregoing events, but not less than five days from the date of such notice. If the Participant fails to repurchase the loan in question on or before the date specified in the notice, for the first 30 days thereafter, the repurchase price shall be the unpaid principal amount of the loan plus interest at the note rate plus 2.5% until payment is received. After such 30 days, the repurchase price shall be the unpaid principal amount of the loan plus interest at the note rate plus 5% until payment is received. Upon repurchase, the Board shall reassign its interest in all appropriate Mortgage Loan documents to the Participant and shall hold the Participant harmless from any action taken by the Board which has impaired the Mortgage lien.

(b) The Participant shall indemnify the Board and hold the Board harmless for any loss, damage and expenses that the Board may sustain as a result of the occurrence of any of the events mentioned in subparagraphs (i), (ii), (iii), (iv) or (vi) of Section 2.06(a).

(c) The Participant recognizes that the Board has established the interest rate on the Mortgage Loans, in reliance upon the limitations upon fees, charges and other amounts charged to the Mortgagor attributable to the Mortgage Loan as set forth in Section 2.03(b) hereof and as warranted by the Participant in paragraph (dd) of Article III hereof and hereby agrees to pay to the Board as liquidated damages for any breach of such warranty, the amount of any such fees, charges or other amounts which exceed the limitations agreed upon herein, or apply such funds to the loan principal as directed by the Board.

(d) It is agreed that the Participant shall be responsible for all damages, attorneys' fees, legal expenses, court costs or other expenses which may have been incurred or expended by the Board in connection with the failure of the Participant to perform its obligations in accordance with this Agreement.

(e) It is further agreed that if at any time any action or other legal proceeding should be instituted against the Board by reason of or in connection with any act or failure to act on the part of the Participant (whether such act or failure to act be in connection with the servicing of any of said mortgages or otherwise), the Participant shall indemnify and hold the Board harmless of and from any and all loss, damage and/or expense which it may sustain or incur by reason thereof including, without limitation, the amount of any judgment, plus any costs and interest thereon, which may be entered against the Board in any such action or proceeding, as well as any and all attorneys' fees and other disbursements paid or incurred in connection therewith.

Section 2.07. ***Transfer of Title to Mortgage.*** Transfer of the right, title and interest of the Participant in the Mortgage Loans to the Board, pursuant to purchase, shall be by delivery of the note evidencing each Mortgage Loan endorsed on the back thereof by the Participant to the order of the Board in the form specified in paragraph (d) of Article III hereof; and all Mortgages shall be assigned under a single or blanket

assignment and which shall be recorded in the office of the County Clerk and Recorder of the county wherein each property is located; all in a manner, form and condition satisfactory to counsel to the Board and as more fully set forth in this Agreement. In addition the Participant shall properly assign to the Board any mortgagee title insurance policy and the rights to any Mortgage insurance relating to said Mortgage Loans. Alternatively, Mortgage Loans may be registered electronically with the Mortgage Electronic Registration System (“MERS”) to replace the assignment of Mortgage Loans to the Board. The Board’s MERS Organization Identification Number for such registration is 1003651.

Section 2.08. *Mortgage Loan Documents.*

(a) Not later than such date specified by the Board prior to each Mortgage Purchase Date, the Participant shall submit for examination by the Board, with respect to each Mortgage Loan to be sold to the Board on such Mortgage Purchase Date, the information required by the submission voucher posted to the Board’s Website for the particular loan program under which the loan was reserved in Lender OnLine, any additional documents if required in the opinion of counsel to the Board to evidence the Participant’s compliance with any representations, terms or conditions contained in this Guide or, at the option of the Board, arrange for inspection of originals of such documents by the Board. The Participant hereby warrants said copies to be true and accurate copies of their respective original documents. Prior to each Mortgage Purchase Date, the submission voucher shall be completed, and all documents required thereby must be available for inspection by the Board, together with all assignments, endorsements, certifications and acknowledgments required by this Guide. Immediately following each Mortgage Purchase Date, all original documents for all Mortgage Loans sold to the Board on such Mortgage Purchase Date must be either set aside from the Participant’s own documents in clearly marked files in a secure location or delivered to the Board, as directed by the Board prior to the Mortgage Purchase Date. The examination of said documents by the Board and its counsel shall not constitute a waiver of any warranty, representation or term hereof. The Participant hereby waives the defense of any statute of limitation that could otherwise be raised in defense to any repurchase obligation or damage to the Board. The Participant shall verify that the Federal Eligibility Requirements contained in Section 2.04 hereof are met.

(b) The Participant shall pay for the preparation and furnishing to the Board of all instruments herein specified, and pay any and all expenses in connection with the transactions covered by this Guide, including, but not limited to, the cost of preparing and recording all the documents necessary to accomplish the transactions intended in this Guide, plus recording charges, and legal fees other than legal fees for services rendered by counsel to the Board. This subparagraph shall not prevent the Participant from charging the Mortgagor closing costs on the Mortgage Loans to the extent permitted by Section 2.03(b) hereof.

(c) The Participant shall cause all notices of the sale of the Mortgage Loans to the Board hereby to be given to the United States Department of Housing and Urban

Development (“HUD”), FHA, PMI, RD or the VA, as and when necessary, including without limitation, preparation and submission at the Participants’ expense, of HUD Form No. 92080, Mortgage Record Change, or such electronic reporting system as shall be acceptable to HUD and the Board.

(d) All funds collected by the Participant pursuant to the terms of the Mortgage Loan prior to the Mortgage Purchase Date with respect to such Mortgage Loan and held by the Participant in escrow at that date, shall be transferred to a special custodial account and held in trust for the Board pursuant to Section 4.05 hereof.

Section 2.09. ***Hazard Insurance.***

(a) As to each Mortgage Loan purchased by the Board, the Participant shall notify the Board and the insurance company or companies issuing any policy or policies insuring each of the mortgaged premises against loss or damage by fire or other hazard (as set out in Section 4.06) by mail or email, that, effective on the Mortgage Purchase Date, such Mortgage Loan will be conveyed to the Board, and shall direct that the Board be designated as a loss payee on said policies as its interest may appear, effective on such Mortgage Purchase Date;

(b) The Participant, to the extent permitted by law, hereby assigns and sets over to the Board as of each Mortgage Purchase Date all its right, title and interest in and to such policies or contracts of insurance any benefits which it has heretofore received or which it may hereafter receive hereunder on all Mortgage Loans conveyed to the Board on such Mortgage Purchase Date. Upon the happening of any insurable event under any such policy of which the Participant has knowledge, the Participant shall with all reasonable speed proceed with vigorous efforts to collect the benefits; and

(c) The Board hereby designates and vests the Participant with all rights necessary to act for and in behalf of the Board to collect said benefits.

Section 2.10. ***Mortgage Loans as Additional Loans.*** The Participant represents and warrants that each Mortgage Loan shall be in addition to, and not in substitution for, residential Mortgage Loans it otherwise would have made in the State of Montana and that no reservation to make any such Mortgage Loan was entered into prior to the date of the Notice of Acceptance or in substitution for any reservation entered into prior to such date unless expressly approved in writing by the Board.

Section 2.11. ***Set-Aside Loans as Whole Loans.*** All set-aside loans shall be reserved and purchased to comply with the Guide provisions for Whole Loans and with the Terms and Conditions for the applicable Set-Aside program.

## **ARTICLE III**

### **REPRESENTATIONS AND WARRANTIES OF PARTICIPANT**

Purchase by the Board of Mortgage Loans is conditioned upon compliance by the Participant with all requirements herein set forth and upon the following undertakings, representations and the existence of the following state of facts with respect to each Mortgage Loan on the Mortgage Purchase Date applicable to it; and the Participant represents and warrants that such state of facts will exist on the Mortgage Purchase Date with respect to each Mortgage Loan and that said representations and warranties survive the purchase of such Mortgage Loans:

(a) The unpaid principal balance of each Mortgage Loan is accurately stated in the assignment for such Mortgage Loan.

(b) The amount of the unpaid principal balance and accrued interest, if any, is justly due and owing.

(c) No counterclaim, offset, defense or right of rescission exists which can be asserted and maintained by the Mortgagor or its successor in interest against the Board, as assignee of said Mortgage Loan.

(d) Each Mortgage Loan is evidenced by a properly executed promissory note made payable or assigned to the order of the Participant and endorsed by the Participant as follows:

“Payable to the order of the Montana Board of Housing without recourse.”

and by a Mortgage which is the legal, valid and binding obligation of the makers thereof and is enforceable in accordance with its terms, except only as such enforcement may be limited by laws affecting the enforcement of creditors’ rights generally.

(e) Each Mortgage, financing statement, if any, and any other document required to be filed in a public office to perfect the Mortgage lien against third parties has been duly and timely filed, registered or recorded by the Participant in the proper public office in order to give constructive notice thereof to all subsequent purchasers or encumbrances.

(f) In acting pursuant to this Guide, the Participant has not discriminated or permitted discrimination against any person or group of persons in any manner prohibited by the laws of the United States or the State.

(g) The Participant is authorized to do business in the State, is a FHA-, HUD 184-, PMI-, RD- and/or VA-approved mortgagee and is in compliance with all other applicable State and federal laws governing the business of the Participant and the making of loans for residential housing.

(h) The Participant, being the sole owner and holder of the Mortgage Loan, has full right to sell and assign the Mortgage Loan to the Board, and such assignment

conveys a good and marketable mortgagee's title to the Board free and clear of all liens and encumbrances and subject only to real property taxes and assessments not yet due and encumbrances customarily accepted in accordance with applicable title standards and disclosed to the Board prior to the Mortgage Purchase Date.

(i) The Mortgage Loan is not subject to any existing assignment or pledge other than the assignment to the Board or registry in MERS, as provided for herein, and title to the Mortgage Loan shall pass to the Board at the time of purchase by the Board.

(j) The Mortgage creates a valid and subsisting first lien on the real property held by the Mortgagor in fee simple, or leasehold for which at least 50 years remains, and improvements therein described (and fixtures) to secure the Mortgage Loan, the term "first lien" meaning such classes of first liens as are commonly given to secure loans on real estate under the laws of the State.

(k) The Participant has not modified in any respect and has not satisfied, canceled, subordinated or compromised in whole or in part the Mortgage Loan indebtedness and has not released the mortgaged property in whole or in part from the lien of the indebtedness evidenced by the note and secured by the Mortgage.

(l) In the event the Mortgage Loan was made to finance the purchase of a newly constructed Residence, said Residence was constructed in accordance with all applicable state and local building laws and regulations and the Board's requirements for new construction as outlined in Exhibit K hereto.

(m) There is no default or delinquency under the terms and covenants of the Mortgage Loan; no payments are delinquent as of the date of delivery to the Board; all costs, fees and expenses incurred in making, closing and recording the Mortgage Loan have been paid; and within the three-month period preceding the submission of the Mortgage Loan by the Participant for purchase by the Board there has not been outstanding any advance of funds by the Participant or any prior holder of the Mortgage Loan, or by another at the request of the Participant or any prior holder of the Mortgage Loan, to or on behalf of the Mortgagor to be used by the Mortgagor for the payment of any monthly installment, principal, interest, or other charges payable under the Mortgage Loan. The Board also retains the right to require repurchase of a Mortgage Loan that is 30 days delinquent within the first 90 days or 60 days delinquent within the first 180 days of scheduled payments.

(n) There is pending no proceeding for a total or partial condemnation of the mortgaged property, and said property is undamaged by fire, wind, storm or other casualty.

(o) The improvements on the property securing the Mortgage Loan have been fully completed and the mortgaged property is free and clear of all mechanics' and material men's liens, or liens in the nature thereof which could materially adversely affect the value of the mortgaged property, and no rights are outstanding that could give rise to such liens and the mortgaged property is free from all other liens, encumbrances,

restrictions and covenants which would materially adversely affect the value of the mortgaged property.

(p) The improvements upon which the appraised value was based (and upon which the Mortgage Loan, in turn, was based) lie wholly within the boundaries and building restrictions of the mortgaged property, and no improvements on adjoining properties encroach upon the mortgaged property unless such encroachments have been waived by FHA, HUD, PMI, RD or VA, as the case may be; there are no exceptions in the title insurance policy, if any, for matters of survey, except for normal easements and restrictions which do not materially adversely affect the value of the mortgaged property.

(q) The Participant has no knowledge of any circumstances or conditions with respect to the Mortgage Loan and Mortgage, or the mortgaged property, or the Mortgagor or his credit standing that can be reasonably expected to cause prudent private investors in the secondary market to regard the Mortgage Loan as an unacceptable investment, cause the Mortgage Loan to become delinquent or adversely affect the value or marketability of the Mortgage Loan and the Participant has no knowledge of any material misstatements by the Mortgagors in any of the material provided in the loan package submitted for Mortgage Loan Purchase.

(r) The Mortgage Loan meets all applicable State and federal laws, regulations and other requirements pertaining to usury.

(s) The relevant requirements of any State or federal laws, rules or regulations respecting, known as or governing consumer credit and truth in lending have been complied with and no right of rescission of the Mortgage Loan transaction exists.

(t) The Participant has no knowledge that any improvement covered by the Mortgage Loan is in violation of any applicable zoning law or regulation.

(u) In connection with the placement of the title or hazard insurance pertaining to the Mortgage Loan or the property securing the Mortgage Loan, to the best of the Participant's knowledge and belief, no unlawful fee, commission, kickback or other unlawful compensation or value, of any kind, has been or will be received by any attorney, firm or other person or entity, and no such unlawful items have been received, retained or realized by the Participant.

(v) All closing and settlement costs and all other charges in connection with the Mortgage Loan, paid or borne by the Mortgagor and by the seller of the property securing the Mortgage Loan, have been disclosed to such parties and have been clearly itemized, identified and explained in detail (with the party paying or bearing such items of cost or other charge clearly indicated) on a closing disclosure or settlement statement, a signed copy of which was furnished on or before closing or settlement to such Mortgagor and seller; and the Participant has complied with all requirements of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533), as amended

by the Real Estate Settlement Procedures Act Amendments of 1975 (Public Law 94-2005), the Federal Consumer Financial Law, and the regulations issued pursuant thereto applicable at the time the Mortgage Loan was originated.

(w) The Participant has no knowledge that either the mortgaged property or appurtenances thereto, or the subjection thereof to the use and enjoyment for the purposes intended, is, or will be, violative of any applicable law, rule or regulation in effect on the Mortgage Purchase Date relating to or governing the protection of the environment, and the Participant has no knowledge of any pending case or proceeding directly involving such property in which compliance with any such law, rule or regulation is an issue or that anything further remains to be done to satisfy in full all requirements of each such law, rule or regulation constituting a prerequisite to such use and enjoyment of said property.

(x) The improvements upon the real property subject to each Mortgage Loan are covered by a valid and existing policy of insurance meeting the requirements of Section 4.06 hereof.

(y) The Mortgage Loan is covered by a paid-up Mortgagee Title Insurance Policy written on the American Land Title Association long form dated 6/17/06 (including endorsements 9.3-06, 22-06 or 22.1-06, 8.1-06, and if Manufactured Housing, endorsement 7-06 or 7.1-06) issued by a title insurer acceptable to the Board in an amount at least equal to the outstanding principal balance of the Mortgage Loan by the Board hereunder, naming the Board as an insured party, such title insurance policy not being subject to any exceptions other than those previously approved by FHA, HUD, PMI, RD or VA and waived in writing by the Board.

(z) The Participant has, and its officers acting on its behalf have, full legal authority to enter into the transactions contemplated by this Guide; and the consummation of the transactions herein contemplated, whether presently or in the future, and compliance with the terms, conditions and provisions hereof will not conflict with or result in a breach of any of the terms, conditions or provisions of the charter or the bylaws of the Participant or any agreement or instrument to which the Participant is now a party or by which it is bound, or constitute a default thereunder; the Participant is not a party to or bound by any agreement or instrument or subject to any judgment, order, writ, injunction, decree, law, rule or regulation which now or in the future may materially and adversely affect the ability of the Participant to perform the obligations of the Participant enforceable against it in accordance with the terms of this Guide subject to any applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally.

(aa) At the date hereof and as of the Mortgage Purchase Date, the Participant shall be duly organized, validly existing and in good standing under the laws of the jurisdiction governing such matters and shall have power and authority to own its properties and carry on its business as now being conducted, and shall be duly qualified to do such business wherever such qualification is required.



(bb) To the knowledge of the Participant, there is no material misstatement or omission in the documents provided by the Mortgagor in connection with the Mortgage Loan.

(cc) The Participant has diligently performed the inquiries and investigations required by Section 2.04 hereof and, based upon such inquiries and investigations and such other facts and circumstances which the Participant may be aware of, the Participant has no reason to believe that the Residence requirement, the three-year requirement, the purchase price requirement, the income requirements, and the new Mortgage requirement, as set forth in Section 2.04 hereof, have not been complied with.

(dd) Based upon information obtained in the course of originating the Mortgage Loan and otherwise, and such reasonable inquiries as the Participant considers necessary and appropriate, the fees, charges and other amounts borne by the Mortgagor which are attributable to the Mortgage Loan do not exceed the limitations set forth in Section 2.03(b) hereof.

(ee) The Participant has complied as to each FHA Insured Mortgage Loan, with the National Housing Act, as amended and supplemented, all rules and regulations issued thereunder and all administrative publications, and such insurance is in full force and effect and will, upon purchase of the Mortgage Loans, inure to the benefit of the Board.

(ff) The Participant has complied as to each Mortgage Loan guaranteed by RD, under Title V of the Housing Act of 1949, as amended and supplemented, all rules and regulations issued thereunder and all administrative publications, and such guaranty is in full force and effect and will, upon purchase of the Mortgage Loans, inure to the benefit of the Board.

(gg) The Participant has complied as to each Mortgage Loan guaranteed by the VA, under the Servicemen's Readjustment Act, as amended and supplemented, with all rules and regulations issued thereunder and all administrative publications, and such guaranty is in full force and effect and will, upon purchase of the Mortgage Loans, inure to the benefit of the Board, such that the guarantee is the maximum allowed by law at the time of Mortgage Loan origination and that no deductions have been made to that maximum resulting from previous use of entitlement by the veteran.

(hh) The Participant has complied as to each Mortgage Loan guaranteed/insured by PMI with all rules thereof, and such guaranty/insurance is in full force and effect and will, upon purchase of each Mortgage Loan, inure to the benefit of the Board.

(ii) The Participant has complied as to each Mortgage Loan guaranteed/insured by HUD with all rules thereof, and such guaranty/insurance is in full force and effect and will, upon purchase of each Mortgage Loan, inure to the benefit of the Board.

## ARTICLE IV

### SERVICING OF MORTGAGE LOANS

Section 4.01. **Authority of Participant.** Participant shall service the Mortgage Loans and shall be an independent contractor acting in its own behalf and for its own account. It shall have no authority, express or implied, to act in any manner or by any means for or in behalf of the Board in any capacity other than that of an independent contractor and in no respect except as herein expressly set forth or as it may from time to time be requested by the Board in writing. Participant is not authorized or empowered to waive or vary the terms of the Mortgage Loans and will not at any time waive or consent to the postponement of strict compliance on the part of any Mortgagor with any term, provision or covenant of a Mortgage Loan.

Section 4.02. **Collection from Mortgagors.** Unless the Participant's obligations hereunder are terminated pursuant to Article II hereof, until the principal and interest of the Mortgage Loans are paid in full, the Participant will proceed diligently to collect all payments due under the Mortgage Loans, including monthly escrow payments sufficient to pay all taxes, assessments, water and sewer charges and mortgage, casualty and hazard insurance premiums as and when the same shall become due and payable. The Participant agrees to service the Mortgage Loans in accordance with standards established by FHA, HUD, PMI, RD and VA, and in accordance with acceptable mortgage practices of prudent lending institutions and shall comply with all relevant and applicable requirements of any state or federal laws, rules and regulations respecting or governing consumer credit or truth-in-lending (including in particular the provisions of the Consumer Credit Protection Act, Public Law 90-321, the Homeowners Protection Act, and the Federal Consumer Financial Law).

Upon payment of any Mortgage Loan in full, with all interest and other payments called for in the mortgage documents, and transmittal of all funds due and payable to the Board, the Participant shall prepare and send to the Board a release of the Mortgage in form proper for recording. The Board will execute the release and return it promptly to the Participant, together with the Mortgage Loan note with "Payment in Full" endorsed thereon.

Section 4.03. **Payment of Charges.** The Participant will promptly discharge all of the obligations of the mortgagee named in the Mortgage Loans, as well as every obligation arising hereunder and under any applicable contract of insurance with the Secretary of HUD, the FHA Commissioner, PMI, the RD guaranty or the Administrator of Veterans Affairs. The Participant shall retain in its possession a record of payment of all such obligations and shall, when requested to do so, forward to the Board for examination satisfactory evidence of such payments. The Board shall have the right to pay any taxes, assessments, water and sewer charges and mortgage, casualty and hazard insurance premiums when due, and the amount thereof shall be added to the debt secured by the lien of the Mortgage.

All first-lien position Mortgage Loans require the Mortgagor to make escrow payments. The Participant shall at least annually review the estimated taxes, assessments, water and sewer

charges and mortgage, casualty and hazard insurance premiums that will become due and payable thereon, determine the adequacy of the monthly escrow payments to pay such charges when they become due and payable, and make such adjustments in the amount of future escrow payments as are necessary and appropriate to pay such charges when they become due and payable. The Participant shall promptly notify the Board of any anticipated deficiency in the funds of the Mortgagor (after taking into account the effect of any such adjustments) which will be available for the payment of such charges when they become due and payable. Except where the Participant is not required to pay interest on the escrow accounts because the payment of such interest would violate any federal law or regulation, the Participant shall bear the sole responsibility for paying interest on such escrow accounts.

#### Section 4.04. *Compensation.*

(a) As compensation for servicing the Mortgage Loans, the Participant shall receive a Servicing Fee (as specified in the related Terms and Conditions); provided, however, that Participant shall deduct the Servicing Fee only when the entire amount of the Mortgagor's monthly payment due with respect to any Mortgage Loan has in fact been paid by the respective Mortgagor. Such fee shall be payable monthly and shall be based upon the outstanding principal balance of the Mortgage Loans at the beginning of each month. For example, if the Servicing Fee factor is .0536, such factor is applied to the interest portion of the level payment of principal and interest. Assuming a loan amount of \$50,000, the initial interest portion of a level payment of \$332.66 is \$291.67. The retained Servicing Fee would then be \$15.63 ( $\$291.67 \times .0536 = \$15.63$ ). In addition, the Participant shall be entitled to retain late charges collected from the Mortgagors (provided that the Participant shall impose, waive, enforce and otherwise act with regard to late charges on the Mortgage Loans serviced hereunder in the same manner and to the same extent as the Participant acts on such charges on mortgages held for its own account) and shall be entitled to retain as full compensation for the management of any of the mortgaged premises during foreclosure proceedings, as described in Section 4.12 hereof, from rentals collected by said Participant, a fee equal to five percent (5%) of the amount of such rentals collected. The Participant will also be entitled to reimbursement from the Board to the extent provided in Section 4.12 hereof.

(b) Notwithstanding any other provision contained in this Guide to the contrary, the Participant shall not charge or collect any fees or compensation of any kind from the Board or any other party for its services pursuant to this Guide, except as expressly provided in this Section 4.04 and in Sections 4.12 and 4.13.

Section 4.05. *Remittances and Handling of Funds.* All funds which are applicable to the payment of principal and interest on the Mortgage Loans and which are received by the Participant by the close of business on the cut-off dates specified by the Board shall be remitted to a designated depository of the Board by wire transfer. The Participant will deduct its Servicing Fee on the each Mortgage Loan from each payment collected thereon. Any amount not remitted within five days of the applicable due date shall bear interest payable to the Board at the rate of fifteen percent (15%) per annum from the date on which such remittance should have been wire transferred until the date

such remittance is actually received by the Board's Trustee. The Participant shall provide such reports and information, based on an acceptable reporting system of accounting, as the Board shall prescribe from time to time. A separate Monthly Mortgage Remittance Statement of Mortgage Loans and related reports are required to report mortgage payments under the Program. The Series Code for the Program shall be specified by the Board upon the issue of each new series of bonds. Interest on monthly Mortgage Payments is calculated using a factor specified in the Terms and Conditions or as modified as the interest rate changes at the discretion of the Board. The Monthly Mortgage Remittance Statement is due in the Board's office no later than the fifth day of each month to cover all loan activity included in the reporting period from the first day to the last day of the previous month. Forms are available upon request.

Mortgage Loans are not typically closed on the first day of the month and result in the Mortgagors paying or being given credit for the odd days of interest. The interest credit or interest payment by the Mortgagor is to be calculated on the actual number of days using the 360-day factor to the first of the month.

The interest calculation on FHA, HUD, PMI, RD and VA loan payoffs is to be calculated on a 365-day factor for the actual number of days from the interest paid to date through the Participant's receipt of collected funds. Prepayment penalties are not to be charged. The funds from the payoff are to be wired to the Board's Trustee promptly, and the "Mortgage Paid-In-Full Form" mailed to the Board. The payoff form and funds are required within three (3) working days after the payoff occurs or the Participant will be charged the daily interest. The payoff figure is then reflected on the Monthly Mortgage Remittance Statement.

Until such funds are paid over to the Board, the Participant shall segregate and hold such funds for the Board in a special trust or custodial account or accounts. The Participant shall also segregate and hold for the Board, in the same or in a similar special trust or custodial account or accounts, all other funds received from the Mortgagors (such as tax and insurance escrow) until applied in accordance with the terms of the Mortgage Loans and, where applicable, the regulations of or contract of insurance with the FHA Commissioner or PMI or the regulations or guaranty of the RD or the Administrator of Veterans Affairs or the Secretary of HUD. Such trust account shall be:

- (a) maintained in a financial institution approved by the Board;
- (b) specifically designated so as to disclose the custodial nature thereof;
- (c) insured by the Federal Deposit Insurance Corporation ("FDIC") or the National Credit Union Administration ("NCUA") to the maximum extent for each party, naming the Board and each individual Mortgagor whose moneys are included therein;
- (d) in compliance with all applicable rules of the FDIC or the NCUA, as the case may be, and, if applicable, the FHA, HUD, PMI, RD or VA. The Participant's records shall clearly show the respective interests of the Board and of each individual Mortgagor in all accounts maintained as aforesaid. Any Participant who has more than

\$250,000 on deposit at any one time from mortgage payments shall immediately remit all sums in excess of \$250,000. If the Participant maintains a PI custodial account for other Board servicers, the aggregate (the Participant's account plus the customer's account) balances on deposit may not exceed \$250,000. If, due to the large number of Mortgage Loans serviced or late in the day receipts or other reasons acceptable to the Board, it is not practical for the Participant to immediately remit any amounts over \$250,000 as aforesaid, the Participant may delay the remittance to the next succeeding business day, but only if and to the extent the Participant pledges to the Board (as security for such remittance) cash and/or obligations of the United States of America, Fannie Mae, FHLMC or GNMA with a market value of 110% of the amount secured and such cash and/or obligations are separately noted as so pledged on the books and records of the Participant and to the extent possible segregated from the other assets of the Participant.

Such funds may be held and managed within the Participant's own banking facilities provided

- (i) such funds are held and managed in accordance with regulations established by the applicable supervising government agency with respect to such funds,
- (ii) proper books and records are maintained reflecting the interest of the Board and each individual Mortgagor therein, and
- (iii) such funds are fully insured as stated above by FDIC or NCUA. In all events, the Participant shall furnish the Board with a copy of the statement of each such account once each year or more often as may be required by the Board or any supervisory authority.

Upon any subsequent assignment of any of the Mortgage Loans, the Board shall mail or email written notice thereof to the Participant, giving the name and address of the assignee. Until the Participant receives such written notice, the Board shall be presumed to continue to be the owner of the Mortgage Loans, and the Participant will be fully protected in continuing to make payments of principal and interest to the Board.

Except as otherwise directed by the Board, no payment of principal and interest on any Mortgage Loan shall be remitted to the Board by the Participant unless (a) all maintenance charges with respect to such Mortgage Loan have been received by it from the Mortgagors, and (b) such maintenance charges as shall have become payable by the mortgagee under the terms of the Mortgage Loan have been paid and discharged in full by the Participant; provided, however, the Participant shall apply any payments received from the Mortgagors so as to avoid defaults adversely affecting the rights of the Board. The term "maintenance charges" as herein used means taxes, insurance premiums and all payments, other than principal and interest, for whatever purpose required by the terms of the Mortgage Loans or by local or State law or

regulations of the FHA, HUD, PMI, RD or VA, to be made by the Mortgagors to the lender or to others.

Section 4.06. **Insurance.** As to the Mortgage Loans serviced pursuant to this Guide, the Participant shall, within ten (10) days of the date of assignment to the Board, by first class mail, postage prepaid, notify:

- (a) the insurance company issuing each policy insuring premises subject to the lien of any such Mortgage Loan against loss or damage by fire or other hazard,
- (b) whichever of FHA, HUD, PMI, RD or VA is providing coverage or benefits, and
- (c) the insurance company issuing life, health, accident or other similar insurance on the Mortgagor which pertains to or originated as the result of any such Mortgage Loan,

that such Mortgage Loan was assigned to the Board, the date of such assignment and that the Board should be named the loss payee under a standard mortgagee clause with respect to such insurance.

The Participant shall assure that at all times during the term of the respective Mortgage Loan that all of the buildings and improvements upon the mortgaged premises are kept insured against loss or damage by fire, with extended coverage, and from such other insurable hazards and risks as is customary in the locality where the mortgaged premises are located and such other hazards or risks as the Board may in its discretion require for its protection. **No part of the real property may be excluded from coverage.** Such policies shall be written by a company licensed to do business in the State and shall be in amounts specifically designated by the Board (set forth in Exhibit L attached hereto) or, if not so designated, in amounts at least equal to the lesser of the full insurable value of the premises or the unpaid principal balance of the Mortgage Loan; provided, however that such insurance shall pay in full the amount of any partial or total loss to the full amount of such insurance and shall otherwise be sufficient to prevent the Mortgagor from being a co-insurer. **The deductible for hazard insurance, flood insurance (if applicable) and townhouse and condominium insurance on such policies shall not exceed the amount stated in the Terms and Conditions.** The Participant shall promptly notify the Board of any loss or damage by fire, or from any other cause, to the mortgaged premises in excess of one thousand dollars (\$1,000), and will not make any agreement with respect to the rehabilitation of the property as the result of such, and shall use its best efforts to assist in the collection of the proceeds of such policies with respect to all losses which may occur. The Participant shall supervise all repairs if so instructed by the Board and in general shall do all things reasonably necessary to protect the interests of the Board as mortgagee. The Participant is hereby authorized to do all things necessary to settle and adjust claims, including endorse drafts, for damages up to one thousand dollars (\$1,000).

The Participant shall comply with all rules and regulations of the FDIC or the NCUA, as the case may be. In addition, the Participant shall take all steps necessary to the end that such

insurance on funds which relate to Mortgage Loans serviced, and are held by the Participant in escrow or otherwise, shall inure to the benefit of the Board.

The Participant shall keep in force throughout the term of this Guide a policy or policies of insurance covering errors and omissions in the handling of the insurance coverage, which policy or policies shall be written by a company licensed to do business in the State, in such form as shall be satisfactory to the Board and in the amount required by the FHA, VA, RD, PMI or HUD, as applicable, but in any event not less than \$300,000.

Section 4.07. *Assumptions.* Mortgage Loans funded with the proceeds of the Board's bonds issued subsequent to 1980 must contain the Board's Uniform Rider to Trust Indenture stating that all principal and interest payments due under the loan may be accelerated if the Mortgagor rents, sells or otherwise transfers an ownership interest in the property or otherwise ceases to occupy the property as the principal residence. Mortgage Loans may be assumed only upon prior Board approval (see, in particular, Section 2.04(g) for federal tax law requirements) and compliance with FHA/HUD 184/PMI/RD/VA assumption requirements. The original mortgagor may be released from liability if approval is granted from FHA, HUD, PMI, RD or VA. Loan assumption documents will be provided to the Participant upon request. The Participant shall notify the Board promptly after the Participant becomes aware of any of such circumstances which may constitute an event of default and will take such further action to investigate the status of the Mortgagor's occupancy as the Board may reasonably request. If it is determined that an event of default has occurred, the Participant shall proceed in accordance with Section 4.08.

Section 4.08. *Defaults of Mortgagors.* The Participant shall notify the Board of any Mortgage Loan which is delinquent and at the same time recommend to the Board to take appropriate action to cure such delinquency. The Participant shall implement or cooperate with any early delinquency counseling program or practice of the Board.

In the event that principal, interest or any maintenance charges with respect to any Mortgage Loan are not paid within sixty (60) days after they become due and payable, the Participant on such sixty-first (61st) day, and monthly thereafter until the default is cured, shall send to the Board a statement listing the account numbers, due dates and amount of default for each such Mortgage Loan, together with a report of the servicing activities in respect to each such Mortgage Loan and a recommendation as to the future action to be taken in respect thereto. In the event that the Mortgagor fails to perform any other covenant or obligation under the Mortgage Loan and such failure continues for a period of twenty (20) days from the time such failure comes to the attention of the Participant, the Participant on such twentieth (20th) day, and monthly thereafter until the default is cured, shall send to the Board a report listing the account numbers and stating, in each, the nature and extent of the default and the efforts taken by the Participant to cause such default to be cured, together with a recommendation as to the future action to be taken in respect thereto. In addition to statements, reports and recommendations as to defaults hereinabove required, the Participant shall send to the Board such additional statements, reports and recommendations, of the character hereinabove provided, as the Board may from time to time request.

Section 4.09. **Inspection.** The Participant shall make exterior and interior inspections on Mortgage Loans in default for more than sixty (60) days or if deemed to be warranted by the Participant. When a Mortgage Loan becomes 90 days delinquent, exterior and interior inspection shall be conducted monthly until such time as the delinquency is cured.

Section 4.10. **Notification by Participant.** Participant shall, in addition to the other notifications called for herein, notify the Board in writing within ten (10) days of any of the following which comes to the attention of the Participant:

- (a) abandonment of the mortgaged premises;
- (b) any lack of repair or any other deterioration or waste suffered, threatened or committed in respect of any mortgaged premises; and
- (c) any other matter which would adversely affect or result in diminution of the value of the Board's security.

Section 4.11. **Compliance with National Housing Act, Title V of the Housing Act of 1949 or Servicemen's Readjustment Act.** Participant represents that it is an FHA-approved, HUD 184-approved, RD-approved and/or VA-approved mortgagee as defined in the National Housing Act, as amended, Title V of the Housing Act of 1949 or the Servicemen's Readjustment Act, and rules and regulations thereunder, or a PMI-approved lender. It is agreed that if at any time the Participant ceases to be an approved Mortgagee, whether by reason of cancellation, revocation, suspension or otherwise, or in the event that any governmental agency, body, or department which shall have guaranteed any of the Mortgage Loans or which has jurisdiction over the operations of the Participant shall cancel, revoke or suspend the authority of the Participant to carry on the business of the Participant as a lender or servicer, or shall otherwise forbid or impair the right or privilege of the Participant to carry on its business operations, notwithstanding anything herein to the contrary, the Board reserves the right to terminate this Guide upon five (5) days written notice to the Participant. Participant agrees that if any of the events specified in this paragraph shall happen, it will give written notice thereof to the Board within two (2) days after the happening of such event.

The Participant shall comply, where applicable, with the National Housing Act, Title V of the Housing Act of 1949 and Servicemen's Readjustment Act, as from time to time amended and supplemented, and with the rules and regulations issued thereunder at the time in force (insofar as the same apply to the obligations of the mortgagee named in any Mortgage Loan), including the giving of all notices and submitting of all claims required to be given or submitted to FHA, HUD, PMI, RD or VA, to the end that the full benefit of the contract of insurance or guaranty will inure to the Board.

If the FHA or PMI insurance or the RD guaranty, VA guaranty or HUD guaranty concerning any Mortgage Loan lapses or is voided or is reduced, released or adversely affected in any way as a result of the Participant's error, act or omission, the Participant shall, at the



option of the Board, purchase such Mortgage Loan from the Board for an amount equal to its then unpaid principal balance, together with accrued but unpaid interest thereon.

Section 4.12. **Foreclosure.** In case of default, the Participant, when so requested by the Board, shall promptly institute foreclosure proceedings or shall proceed to acquire the property by such other means as the Board shall direct, including, where applicable, in accordance with the provisions of the National Housing Act, Title V of the Housing Act of 1949 or the Servicemen's Readjustment Act and the rules and regulations issued or to be issued thereunder. The Participant through an attorney acceptable to the Board shall conduct all such proceedings as directed by the Board and take title to the property in the name designated by the Board. If the property is conveyed to the FHA, HUD, PMI or VA or if a claim is made against the RD Guarantee, the Participant shall promptly attend to the settlement with the FHA, HUD, PMI, RD or VA as part of its services under this Guide.

In the alternative, when so requested by the Board, the Participant shall promptly take all appropriate steps to obtain the benefits of any contract of insurance or guaranty by assignment of the defaulted obligation, without foreclosure, to the FHA, HUD, PMI, RD or VA, pursuant to the respective provisions of the National Housing Act, Title V of the Housing Act of 1949 or the Servicemen's Readjustment Act, as amended, and the rules and regulations issued thereunder, or the PMI insurance or HUD Section 184 program, and the Participant, when so requested by the Board, shall attend to the settlement with the FHA, PMI, RD or VA as part of its services under this Guide.

The Participant shall assure that all such proceedings are conducted to the best interest of the Board and until the completion thereof shall protect the mortgaged premises from waste.

The Board agrees to reimburse the Participant for necessary and reasonable costs and expenses of any such proceedings, including reasonable attorney's fees.

Section 4.13. **Property Management.** In the event that foreclosure proceedings are instituted, the Participant from the date of the commencement thereof until the termination thereof, shall manage and protect the mortgaged premises under foreclosure according to guidelines promulgated by FHA, HUD, PMI, RD, VA or the Board as the same may be amended from time to time. Such services shall include, but not be limited to, the rental of the premises if permissible under the applicable laws and requested by the Board, the collection of rents, attending to insurance on the premises in the manner provided in Section 4.06 hereof, management and supervision of repairs and maintenance of the premises, and the rendering to the Board of such reports as the Board may require. The Participant will remit to the Board or deposit for its account, as the Board shall instruct, all rentals or other moneys in respect of said premises which may come into its hands as provided in Section 4.05 hereof. If the Board shall from time to time direct the Participant with respect to the manner or procedure of the performance of any of the duties and services referred to in this Guide, the Participant will perform such duties and services in accordance with such direction, anything herein to the contrary notwithstanding. The Board shall indemnify the Participant for necessary costs and expenses, including reasonable attorney's fees as approved by the Board.

Section 4.14. **Error and Omissions and Fidelity Insurance.** Participant will maintain an errors and omissions policy of insurance and fidelity bond with a reputable insurance company licensed to do business in Montana in an amount not less than the amount required by the Federal National Mortgage Association for its participating servicers, and furnish a certificate of insurance evidencing such coverage to the Board.

Section 4.15. **Mortgage Servicing.** Mortgage Loans shall be serviced by Montana Board of Housing or the Participant pursuant to and in accordance with the terms and conditions of this Guide and any other correspondence relating hereto.

Section 4.16. **Records.** The Participant shall keep satisfactory books and records pertaining to each Mortgage Loan which reflect the interest of the Board therein and shall make its reports in such manner as the Board may prescribe. The Participant shall permit the Board or its authorized representative, at any time during the Participant's business hours, to examine all books and records relating to the Mortgage Loan. The Participant shall supply the Board with photo static or other copies of such of these records as it may desire. Such records may not be destroyed or otherwise disposed of without the prior written consent of the Board. Such records may be stored electronically, but the Participant must be able to recover them in hard copy form upon notice from the Board.

## ARTICLE V

### RESERVATION, PURCHASE AND SERVICING OF MORTGAGE BACKED SECURITY MORTGAGE LOANS

Section 5.01. **General.** From time to time, in lieu of purchasing Mortgage Loans directly, the Board may conduct programs pursuant to which Mortgage Loans are purchased by a Master Servicer, which Master Servicer then pools such Mortgage Loans into MBSs and sells the MBSs to the Board. The origination and sale of such Mortgage Loans must comply with requirements set forth hereinafter in this Article V, as well as any conditions set forth in the related Invitation to Participate, Notice of Acceptance, and Terms and Conditions.

Section 5.02. **MBS Guide.** Each Mortgage Loan to be originated and sold to the Master Servicer and pooled into an MBS is required to meet all the terms and conditions of the contracts and guide related to such MBS program (e.g., Fannie Mae Guide, FHLMC Guide or GNMA Guide).

Section 5.03. **Board Guide Provisions to Also Be Satisfied.** In addition to satisfying all the terms and conditions of the applicable MBS guide, any Mortgage Loan to be sold to a Master Servicer and pooled into an MBS must also meet certain terms and conditions of this Guide, as follows:

- (a) The Mortgage Loan Reservation Procedures of Article II hereof will apply.

(b) Each Mortgage Loan must meet the Mortgage Loan General Requirements of Section 2.03 hereof.

(c) Each Mortgage Loan must meet the Federal Eligibility Requirements of Sections 2.04 and 2.05 hereof.

(d) The remedies and indemnification provisions of Section 2.06 hereof shall apply, except subsections (a)(i) and (a)(iii) shall not apply.

(e) Section 2.10 shall apply.

(f) Article III, subsections (c), (f), (g), (h), (i), (j), (k), (l), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc) and (dd) shall each apply to any such Mortgage Loan.

(g) Section 4.11 shall apply.

(h) Article VI shall apply to any such Mortgage Loan.

Section 5.04. **Closing and Compliance Review.** Each Mortgage Loan must be reviewed and approved by the Board for compliance with the Federal Internal Revenue Code and all regulations thereto, as well as with Board criteria, after closing and prior to purchase by the Master Servicer. Documents required for the compliance review are outlined in The submission voucher specific to this program, as posted to the Board's Website. A complete package of compliance review documents shall be delivered to the Board for review within four (4) Business Days following signature of all closing documents for a Mortgage Loan by the Mortgagor. The Board shall inform the Participant and the Master Servicer within ten (10) Business Days of receipt of a completed compliance package as to whether the Mortgage Loan is approved for purchase in terms of compliance with Federal Eligibility Requirements and Board criteria.

Section 5.05. **Purchase.** The Participant shall commence to make Mortgage Loans promptly and shall tender such Mortgage Loans for sale to the Master Servicer within 45 days after the signing of the note by the Mortgagor during the reservation period set forth in the Terms and Conditions. The purchase price for each Mortgage Loan shall be the percentage of the outstanding principal amount of the Mortgage Loan designated in the applicable Terms and Conditions together with the interest accrued thereon to the Mortgage Purchase Date.

Section 5.06. **Servicing.** Mortgage Loans purchased by the Master Servicer shall be serviced by the Master Servicer in accordance with provisions of the applicable MBS program (e.g., Fannie Mae Guide, FHLMC Guide or GNMA Guide), the Board Guide as indicated herein, and the applicable Terms and Conditions.

Section 5.07. **Repurchase of Loans.** Each Participant agrees to repurchase any Mortgage Loan sold to the U.S. Bank Home Mortgage – MRBP, the Master Servicer, or any subsequent Master Servicer, at any time during the life of such Mortgage Loan, upon the occurrence of any of the following events:

(a) Master Servicer reasonably believes any violations of any rule, regulation, or requirement of the applicable agencies, i.e. FHA, HUD, VA, RD, FHLMC, GNMA or Fannie Mae or any other investor as may be identified in the Bond program, or specific guidelines as outlined in the Board’s documents/program manuals.

(b) For Mortgage Loans not underwritten by the Master Servicer or its approved designees, should the Mortgagor fail to make the first payment due to the Master Servicer by the due date of the next mortgage payment, the Participant shall not have the right to advance any funds for or on behalf of the Mortgagor for any delinquent payment, or to otherwise make funds available to any Mortgagor to aid or cure a default by the Mortgagor. Payment, for which the Master Servicer deducted funds at the time the Mortgage Loan is purchased from the Participant, shall not be considered the first payment due the Master Servicer.

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

(d) Participant fails to obtain FHA insurance, VA, HUD or RD guaranty, PMI, or if such insurance or guaranty lapses or for any reason becomes unavailable, as a result of any negligent act or omission by the Participant, or the failure by the Participant to obtain such insurance or guaranty within ninety (90) days from the date of purchase.

(e) Master Servicer is required to repurchase any Mortgage Loan sold by it to GNMA, FHLMC or Fannie Mae or any other investor, by reason of a deficiency in or omission with respect to the Mortgage Loan documents, instruments, and agreements, pertaining to such Mortgage Loan.

(f) Any representation or warranty made by the Participant under this Agreement with respect to any Mortgage Loan shall, in the reasonable opinion of the Master Servicer, be, in whole or in part and with or without knowledge of the Participant, false at the time when made by Participant or become false upon the occurrence of subsequent events.

(g) Any material fraud, misrepresentation or act of omission with respect to the information submitted on a particular Mortgage Loan is determined to exist by the Master Servicer or another investor. This includes, but is not limited to, fraud or misrepresentation by the Mortgagor or other third party, and any misrepresentation of Mortgagor’s income, funds on deposit, or employment, or of the occupancy status of the mortgaged property.

(h) Participant's breach of any covenant or obligation to the Master Servicer with respect to the Mortgage Loan under this Guide or any program manuals.

(i) If a Mortgage Loan is more than 30 days delinquent within the first six months of scheduled payments following the pooling of the mortgage into an MBS, the Board or the Master Servicer may require repurchase of the loan by the originating Participant.

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

Section 5.08. ***Indemnification.*** The Participant shall protect, indemnify and hold the Master Servicer harmless from and in respect to, any and all losses, liabilities, reasonable costs and expenses (including attorneys' fees) that may be incurred by the Master Servicer with respect to, or proximately resulting from any breach of, any representation, warranty or covenant of the Participant hereunder. The Master Servicer shall be entitled to rely upon the Participant as assembler and preparer of all Mortgage Loan documents, and is under no duty whatsoever to investigate or confirm any of the information set forth therein as to its honesty, accuracy or completeness. The Participant hereby agrees to indemnify and hold the Master Servicer harmless from any claim, loss or other damage to the Master Servicer including reasonable attorneys' fees resulting in whole or in part from any inaccuracy or incompleteness in the Mortgage Loan documents or any act or omission by the Participant, its agents and employees, including but not limited to failure to comply with applicable state, federal and local statutes or regulations. To the extent the Participant, its agents or employees, commits an actual wrong or makes some error or omission in the preparation of any Mortgage Loan or its documents, and as a result thereof, and based thereon, the Master Servicer commits an act or omission for which it becomes liable to the Mortgage(s) or any third party and/or a claim or cause of action is instituted against the Master Servicer, the Participant shall and hereby agrees to indemnify and hold the Master Servicer harmless from any such loss or damage, including reasonable attorneys' fees, resulting therefrom.

Section 5.09. ***Refund of Service Release Premiums.***

(a) If any Mortgage Loan is prepaid in full within six (6) months following the date of purchase by the Master Servicer, from the Participant, the Participant shall refund to the Master Servicer all service release premiums received from the Master Servicer with respect to that Mortgage Loan.

(b) Excluding a first payment default as defined in Section 5.07(b) above, if any Mortgage Loan, underwritten by the Participant, becomes 90 days delinquent within the first six (6) months after the loan was purchased by the Master Servicer, and such Mortgage Loan is not brought current by the Mortgagor within 90 days of such delinquency, the Participant shall refund to the Master Servicer all service release premiums received from the Master Servicer with respect to that Mortgage Loan, plus an indemnification fee of \$1,000 on conventional loans and \$2,000 on government loans. For this purpose, the Mortgagor shall be considered 90 days delinquent on a monthly payment when that payment is not received by the Master Servicer by the first day of the third month following the payment due date, regardless of the actual number of the days in the month. For example, if the Mortgagor has not made his/her January payment by the last day of March, the Mortgagor shall be considered 90 days delinquent with respect to the January payment.

Section 5.10. ***Transfer of Title to Mortgage.*** Transfer of the right, title and interest of the Participant in the Mortgage Loans to the Master Servicer, pursuant to purchase, shall be by delivery of the note evidencing each Mortgage Loan endorsed on the back thereof by the Participant to the order of the Master Servicer in the form specified in the Funding and Delivery Guide of U.S. Bank National Association, or the subsequent Master Servicer, and all Mortgages shall be assigned under a single or blanket assignment and which shall be recorded in the office of the County Clerk and Recorder of the county wherein each property is located, all in a manner, form and condition satisfactory to counsel to the Master Servicer and as more fully set forth in this Guide. In addition the Participant shall properly assign to the Master Servicer or its designee any mortgagee title insurance policy and the rights to any Mortgage insurance relating to said Mortgage Loans. Alternatively, Mortgage Loans can be registered electronically with MERS to replace the assignment of such Mortgage Loans to the Master Servicer.

Section 5.11. ***Final Documents.*** The Participant agrees to deliver to the Master Servicer all final documents customarily not available at the time of closing in accordance with the Funding and Delivery Guide of U.S. Bank N.A, or any subsequent Master Servicer.

Section 5.12. ***Hazard Insurance.***

(a) As to each Mortgage Loan purchased by the Master Servicer, the Participant shall notify the Master Servicer and the insurance company or companies issuing any policy or policies insuring each of the mortgaged premises against loss or damage by fire or other hazard (as set out in Section 4.06 hereof) by mail that, effective on the Mortgage Purchase Date, such Mortgage Loan will be conveyed to the Master Servicer, and shall direct that the Master Servicer be designated as a loss payee on said policies as its interest may appear, effective on such Mortgage Purchase Date;

(b) The Participant, to the extent permitted by law, hereby assigns and sets over to the Master Servicer as of each Mortgage Purchase Date all its right, title and interest in and to such policies or contracts of insurance any benefits which it has heretofore received or which it may hereafter receive hereunder on all Mortgage Loans

conveyed to the Master Servicer on such Mortgage Purchase Date. Upon the happening of any insurable event under any such policy of which the Participant has knowledge, the Participant shall with all reasonable speed proceed with vigorous efforts to collect the benefits; and

(c) The Master Servicer hereby designates and vests the Participant with all rights necessary to act for and in behalf of the Board to collect said benefits.

## ARTICLE VI

### MISCELLANEOUS

Section 6.01. **Termination, Accounting.** The Board may at any time terminate a Participant's rights to originate or service Mortgage Loans hereunder without cause and without a termination fee upon at least five (5) days' written notice to Participant.

From and after the effective date of termination pursuant to any provision thereof, the Participant shall be relieved of any further responsibility, provided that any previously incurred liability of Participant to the Board shall continue. The Participant forthwith upon such termination (a) shall pay over to the Board or its designee all moneys collected and held by it pursuant to this Guide and/or pursuant to any agreement, letter or arrangement relating to the Mortgage Loans, (b) shall deliver to the Board or its designee all loan documents, insurance policies, and records in connection therewith and (c) shall deliver to the Board a full accounting, including a statement showing the monthly payments collected by it and a statement of moneys held in trust by it for the payment or maintenance or other charges in respect to the Mortgage Loans. Unless sooner terminated as herein provided, this Guide shall continue from the date hereof during the term of the Mortgage Loans, and until the principal and interest of the Mortgage Loans are paid in full, or until proceedings to foreclose the Mortgage Loans are finally terminated or title to the mortgaged premises is acquired by the Board in lieu of foreclosure or all Mortgage Loans are assigned to the FHA, HUD, PMI or VA under the contract of insurance or guaranty.

Section 6.02. **Annual Report of Participant's Financial Condition.** The Participant shall furnish to the Board, at the request of the Board, and at the Participant's expense, complete financial information as required by the Board from time to time.

Section 6.03. **Assignment.** A Participant's rights, duties and obligations under this Guide shall not be assigned, whether by operation of law or otherwise, by the Participant or its successors or assigns without the written consent of the Board, which consent shall not be unreasonably withheld. Any such assignment shall only be to another qualified Participant approved by the Board. This Guide shall be binding upon all successors and assigns of the parties.

Section 6.04. **Notices.** All notices from Participant to the Board shall be in writing and addressed to the Board and all notices from the Board to Participant shall be in writing and addressed to Participant and emailed or sent by mail at its Notice Address herein specified unless another address is designated in writing by Participant.

Section 6.05. *Other Provisions.*

(a) The Participant shall, at its expense, execute all other documents and take all other steps requested by the Board from time to time to perform the covenants, representations and warranties herein.

(b) The Board reserves the right at all times to decline to finance any Mortgage Loan offered or submitted to it by the Participant, which Mortgage Loan, in the opinion of the Board or its counsel, does not conform to this Guide.

(c) In the event the Participant is the recipient of any funds, from whatever source received, intended to reduce or pay the Mortgage Loan or assist in the payment of the monthly payments, the Participant agrees to promptly apply all such funds for the purposes intended.

(d) This Guide shall be governed by the laws of the State.

(e) This Guide, the Invitations to Participate, Notices of Acceptance, Terms and Conditions and the exhibits and schedules annexed hereto constitute the entire agreement of the parties hereto with respect to the subject matter. The Board reserves the right to supplement and amend the provisions of this Guide and the Terms and Conditions and shall notify the Participant in writing or by email of any such supplement or amendment. Such supplements or amendments shall have the same force and effect as if originally contained in this Guide. Inaction or failure to demand strict performance shall not be deemed a waiver.

(f) No holder/owner of any bond issued by the Board (a “Bondholder”) shall have any right to institute a suit with respect to this Guide except as specifically provided in a resolution or indenture of the Board, and then only for the equal benefit of all Bondholders. This provision may be enforced by any Bond trustee or any Bondholder.

(g) In the event any provision of this Guide shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(h) With respect to any disputes between the Board and any Participant which arise concerning the terms and provisions of this Guide, the meaning thereof or decisions to be made thereunder, the judgment of the Board shall govern.

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## **EXHIBIT A**

THE UNIFORM MORTGAGE RIDER IS TO BE APPENDED TO ALL STANDARD FORM MORTGAGES EXECUTED ON FHA-, HUD-, RD-, VA- or PMI-APPROVED FORMS:

### **MONTANA BOARD OF HOUSING UNIFORM RIDER TO TRUST INDENTURE**

The rights and obligations of the parties to the attached Trust Indenture and the Note which it secures are expressly made subject to this Rider. In the event of any conflict between the provisions of this Rider and the provisions of the Trust Indenture or Note, the provisions of this Rider shall control.

1. The Mortgagor agrees that the Participant or its assignee may, at any time and without prior notice, accelerate all payments due under the Trust Indenture and Note and exercise any other remedy allowed by law for breach of the Mortgage or Note if, without the prior consent of the Participant or its assignee:

(a) The Mortgagor sells, rents, otherwise transfers any interest in the property by deed of trust, conditional sales contract, pledges, agreements to hold title in escrow and any other form of owner financing or fails to occupy the property as his or her permanent and principal residence;

(b) The Mortgagor fails to abide by the agreements contained in the Affidavit of Mortgagor's Eligibility, or if the Participant or the Montana Board of Housing finds any statement contained in the Affidavit of Mortgagor's Eligibility to be untrue; or

(c) The Montana Board of Housing, at any time, in its sole discretion, determines that the requirements of Section 143 of the Internal Revenue Code of 1986, as amended, with respect to Mortgage Loans have not been complied with, whether or not the Mortgagor is responsible for such noncompliance.

The Mortgagor understands that the agreements and statements of fact contained in the Affidavit of Mortgagor's Eligibility are necessary conditions for the granting of the Loan.

2. The Mortgagor agrees that the Participant or its assignee may impose a late charge in the amount that is the industry standard of each monthly payment of principal and interest which is more than fifteen (15) days delinquent.

3. The Mortgagor agrees, in the event the Montana Board of Housing approves a complete assumption of the Mortgage, that the Mortgagor shall be released from the payment of all amounts due and to become due under the Mortgage, provided FHA, HUD, PMI, RD and/or VA completely releases such Mortgagor from obligations under the Mortgage. Otherwise, the Mortgagor shall continue to remain fully liable for the payment of all amounts due and to become due under the Mortgage, irrespective of any payments or actions taken or not taken by the assuming party.

4. In the event the obligation secured by this Trust Indenture has been declared due by reason of a breach or default in the performance of the obligations set forth in paragraph 1 of this Rider, the interest payable on the sums secured by this Trust Indenture shall be increased to the current market rate for conventional loans in effect at the time of such declaration.

As long as this Mortgage is held by the Montana Board of Housing or its agent, the Participant may declare all sums secured by this Mortgage to be immediately due and payable if:

(a) all or part is sold or otherwise transferred (other than by devise, descent or operation of law) by Mortgagor to a purchaser or other transferee:

(i) who cannot reasonably be expected to occupy the property as a principal residence within a reasonable time after the sale or transfer, all as provided in Section 143(c) and (I)(2) of the Internal Revenue Code; or

(ii) who has had a present ownership interest in a principal residence during any part of the three-year period ending on the date of the sale or transfer, all as provided in Section 143(d) and (I)(2) of the Internal Revenue Code (except that the language "100 percent" shall be substituted for "95 percent or more" where the latter appears in Section 143(d));

(iii) at an acquisition cost which is greater than 90 percent of the average area purchase price (greater than 110 percent for targeted area residences), all as provided in Section 143(e) and (I)(2) of the Internal Revenue Code;

(iv) who has a gross family income in excess of the applicable median family income as provided in Section 143(f) and (I)(2) of the Internal Revenue Code;

(b) Mortgagor fails to occupy the property described in the mortgage without Participant's prior written consent; or

(c) Mortgagor omits or misrepresents a material fact in an application for this mortgage.

References are to the Internal Revenue Code in effect on the date of execution of the mortgage, and are deemed to include the implementing regulations.

#### NOTICE TO MORTGAGOR:

This document substantially modifies the terms of this Loan. Do not sign it unless you have read and understand it.

I hereby consent to the modification of the terms of the Mortgage and Note which are contained in the Rider.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature \_\_\_\_\_  
Printed \_\_\_\_\_

Signature \_\_\_\_\_  
Printed \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, a notary public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day and year first-above written.

[NOTARIAL SEAL]

\_\_\_\_\_  
(Print Name) \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**EXHIBIT B**

**MORTGAGOR'S AFFIDAVIT AND CERTIFICATION  
SINGLE FAMILY BOND PROGRAM OR MCC PROGRAM**

MORTGAGE LOAN INTEREST RATE \_\_\_\_%

ISSUER: Montana Board of Housing ("Board")

MORTGAGOR(S) \_\_\_\_\_

PROPERTY ADDRESS \_\_\_\_\_

LEGAL DESCRIPTION: \_\_\_\_\_

\_\_\_TARGETED AREA

\_\_\_NON-TARGETED AREA

The undersigned (jointly and severally, the "Mortgagor"), as applicant for a Mortgage Loan (or as applicant to assume a Mortgage Loan) financed by the Single Family Bond Program or as applicant for a mortgage credit certificate ("MCC") with respect to a Mortgage Loan under the MCC Program, and as purchaser of a Residence which is the subject of such Mortgage Loan, being first duly sworn (or affirmed) under oath, hereby states and certifies that:

1. I possess the legal capacity to incur the obligations of the Mortgage Loan.
2. I shall use the Residence to be purchased as my principal residence promptly and in no event later than sixty (60) days following the Mortgage Loan closing, and thereafter to maintain the property as my principal residence throughout the term of the Loan. I do not intend to, or have not entered into an arrangement to rent, sell, assign or transfer the Residence. I will not use the Residence in a trade or business which qualifies me to deduct any portion of the cost of the home as a home business expense on my federal tax return, and in any event will not use the Residence primarily in a trade or business. (A residence more than 15% of the total area of which is reasonably expected to be used in a trade or business, including child care services on a regular basis for compensation, is "primarily for purposes of a trade or business.") I will not use the Residence as an investment property or a recreational home. The land purchased with the Residence does not exceed the acreage limitation of the Small Tract Financing Act and the value of the land financed is not to exceed 35% of the loan (except as permitted by the Board in limited circumstances) and will not, other than incidentally, provide a source of income.
3. The information included in the residential loan application is true, accurate and complete. No part of the cash down payment, or closing costs has been borrowed from any source other than disclosed upon this application. Mortgagor(s) name(s), the property address and legal description for the mortgage applied for are all true and correct.
4. I understand that if there is a continuous period of at least one year during which the Residence (financed by a Loan under the Bond Program) is not the principal residence of at

least one of the Mortgagors, then under Section 150(b) of the Internal Revenue Code of 1986, as amended, (the "Code"), no deduction is allowed in computing taxable income for interest that accrued on the Loan on or after the date such one-year period began.

5. I understand (i) that my Mortgage Loan has been financed with the proceeds of tax-exempt qualified mortgage bonds or (ii) that the MCC is provided through the use of qualified mortgage credit certificates pursuant to the Code. As a Mortgagor I may receive benefits from this financing such as a savings in mortgage loan interest costs or benefits from an MCC such as a tax credit that may reduce my federal income tax liability. As a result, pursuant to Section 143(m) of the Code, I may, at the time of resale of a Residence financed by a Mortgage Loan, be subject to a special "recapture tax" for federal income tax purposes. I understand that I should consult a tax advisor at the time of resale of the residence to determine the amount, if any, of such "recapture tax." I hereby acknowledge receipt of the "Notice to Mortgagor of Maximum Recapture Tax and of Method to Compute Recapture Tax on Sale of Home" from the Participant.

6. The family income of all Mortgagors and of all adult persons who reside or intend to reside with such mortgagor in the same Residence (other than persons under 18 years of age), is \$\_\_\_\_\_. There are \_\_\_\_\_ members of our family that will occupy the Residence. All information is true and complete.

7. I understand that under the applicable above referenced Program, all or a part of the Mortgage Loan proceeds may be used to pay or replace a short term construction loan or temporary initial financing on the residence to be financed where the term of such interim financing is 24 months or less. Complete and accurate copies of all documents have been provided to the hereinafter described Mortgage Lender (the "Participant") pertaining to the interim financing (if applicable) of the Residence to be financed under the Program. I have not had a mortgage (whether paid off or not) on the Residence at any time prior to the execution of the mortgage (other than such construction or temporary loan).

8. I understand that for purposes of the following, examples of interests which constitute "Present Ownership" interests are as follows: (i) a fee simple interest, (ii) a joint tenancy; a tenancy in common, or tenancy by the entirety; (iii) the interest of a tenant-shareholder in a cooperative; (iv) a life estate; (v) a land contract (i.e., a contract pursuant to which possession and the benefits and burdens of ownership are transferred although a legal title is not transferred until some later time); and (vi) an interest held in trust for the Mortgagor (whether or not created by the Mortgagor) that would constitute a present ownership interest if held directly by the Mortgagor.

Also for the purposes of the following, I understand that examples of interests which DO NOT constitute "Present Ownership" interests are as follows: (i) a remainder interest, (ii) a lease with or without an option to purchase; (iii) a mere expectancy to inherit an interest in a principal residence; (iv) the interest that a purchaser of a residence acquires on the execution of a purchase contract; and (v) an interest in other than a principal residence during the previous three years.

Select (a) or (b) or (c) as appropriate:

\_\_\_ (a) Other than allowed as a consequence of financing in effect as set forth in Section 7 above at no time during the three-year period prior to the closing of this Mortgage Loan have I had any present ownership interest in my principal residence. During the three-year period prior to the closing of this Mortgage Loan I have lived as a tenant, lived with members of my immediate family, or under some other arrangement without having a "Present Ownership" interest in the principal residence in which I lived.

\_\_\_ (b) During the three-year period prior to the closing of this Mortgage Loan I have had a "Present Ownership" interest in my principal residence.

\_\_\_ (c) I am a "veteran" within the meaning of 38 U.S.C. Section 101 who has not previously obtained a loan financed by single family housing revenue bonds or mortgage credit certificate and utilizing the veterans exception of Section 143(d)(2)(D) to the three-year "Present Ownership" rule described in (a) above, or I am a spouse of such a veteran who is also a Mortgagor.

9. The Residence I am purchasing (\_\_\_) IS or (\_\_\_) IS NOT located in a Targeted Area. If the Residence being purchased with this Mortgage Loan IS NOT located in the Targeted Area (as indicated above), or I do NOT qualify as a "veteran" (as indicated above), I am required and have attached hereto copies of my signed Federal Income Tax Returns for the three previous years or as otherwise required unless I did not and was not required to file such a return in accordance with Section 6012 of the Internal Revenue Code. Full disclosure and documentation of such has also been provided to the Mortgage Lender if applicable. The years for which I was not required to file Federal Income Tax Returns were as follows: \_\_\_\_\_ . Indicate reason not required to file returns, if applicable: \_\_\_\_\_ .

If the Mortgage Loan is closed between January 1 and April 15 of this calendar year, I (we) understand that a complete copy of my (our) federal income tax return for the previous year must be provided to Montana Board of Housing through the Participant as soon as reasonably possible, or by April 15, whichever is earlier.

10. The "Acquisition Cost" of the Residence is \$\_\_\_\_\_. I hereby certify the information used in computing Acquisition Cost to be true, accurate and complete. Attached hereto is a complete and accurate copy of the buy/sell agreement (purchase or sales contract) executed by the Mortgagor(s) and seller(s). There exists no other agreement, written or oral, between the Mortgagor and seller.

I have provided all of the funds for the down payment for purchase of this property from my own funds, or those fully allowed and fully disclosed in my financial statement and not directly or indirectly in any part from funds or collateral provided, given or financed directly or indirectly from, by or through the seller or any other party acting upon request of seller or myself.

11. Neither I or any related person, as defined in Section 147(a)(2) of the Code shall, pursuant to an arrangement, formal or informal, purchase any bonds the proceeds of which were

used to provide financing for the Mortgage Loan in an amount related to the amount of my Mortgage Loan.

12. If the Mortgage Loan is financed under the Bond Program, I understand I am not allowed to sell my home to any person and permit such person to assume my obligations under the mortgage and related note (with or without release of my liability) unless such person (i) satisfies all requirements of this affidavit and so certifies as such; (ii) meets all assumption requirements of FHA, PMI, RD or VA (as applicable); and (iii) has obtained prior written consent of the Board and Participant.

13. I have read the Note, Mortgage and Addendum, and, if the Mortgage Loan is financed under the Bond Program, understand that the failure to meet one or more of the requirements, or misrepresentation by me as to one or more of the above stated requirements, may result in acceleration of the Mortgage Note resulting in a demand for immediate payment of the entire balance owing on the Mortgage Loan.

14. If the Mortgage Loan is benefitting from an MCC (i) I represent and warrant that no portion of the financing of the Residence is provided from the proceeds of a qualified mortgage bond or a qualified veteran's mortgage bond and no portion of the financing for the Residence is provided by a related person to the Mortgagor; (ii) I understand that I may seek financing from any lender of my choosing (the Participant has informed me that it is a Participant in the Board's MCC Program, the Guide for which contains the eligibility requirements for qualified MCCs); and (iii) I understand that if an MCC is issued to me, it may not be transferred or assumed without the written consent of the Board.

15. I certify that  I AM or  I AM NOT an employee, officer, director or member of the Board, of the Trustee or of the Participant or other State Official, acting on behalf of the Board, through which I am making the Mortgage Loan Application, and that  I AM or  I AM NOT related by blood, marriage or adoption to any such persons. My position and/or relationship (if applicable) is \_\_\_\_\_.

16. I am not presently obligated on a mortgage loan financed under the Bond Program or MCC Program.

17. I understand that further investigation or verification of the information provided may be required, and that all information provided, including my tax returns, is hereby deemed to be public information and do hereby release the Participant, the Board, the Trustee (as applicable) and their respective trustees, officers, directors, employees, attorneys and agents from any claim that I may now have or in the future based upon, arising out of or related to any investigation or verification which the Board, its trustees, officers, directors, employees, attorneys or agents may undertake.

18. In some cases, the Board may combine money from more than one series of bonds to make a single mortgage loan under its Bond Program. In such cases, to comply with the requirements of the Internal Revenue Service, the Board allocates separate rates of interest for the separate portions of the mortgage loan. For the convenience of you as the borrower/mortgagor, the Board uses a single mortgage/deed of trust note that states a single





STATE OF MONTANA ]  
] ss.  
COUNTY OF \_\_\_\_\_]

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day and year first-above written.

[NOTARIAL SEAL]

\_\_\_\_\_  
(Print Name) \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

I have explained the contents of this Affidavit to each of the Mortgagors whose signature appears above, and I have no reason to believe that those individuals made any misstatements in the warranties and representations required to be made herein or omitted to state any of the information requested.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mortgage Lender

**EXHIBIT C**

**SELLER'S AFFIDAVIT  
SINGLE FAMILY BOND PROGRAM  
OR MCC PROGRAM**

ISSUER: Montana Board of Housing ("Board")

SELLER'S NAME \_\_\_\_\_

SELLER'S ADDRESS \_\_\_\_\_

(forwarding address when applicable)

MORTGAGOR'S NAME \_\_\_\_\_

PROPERTY ADDRESS \_\_\_\_\_

The undersigned (jointly and severally the "Seller"), as Seller of a Residence which is subject to a Mortgage Loan provided by the above-referenced Programs, being first duly sworn (or affirmed) under oath hereby states and certifies that:

1. Select (a), (b), (c) or (d) as appropriate:
  - (a) The Seller is more than eighteen (18) years of age and a citizen of the United States.
  - (b) The Seller is a corporation duly organized and in good standing under the laws of \_\_\_\_\_ (corporate jurisdiction), and the persons executing this affidavit and the deed on behalf of the Seller are duly elected officers of the Seller and have been fully empowered by proper resolution of the board of directors of the Seller to execute and deliver this affidavit and the deed; and the Seller has full corporate capacity to convey the real estate described herein and all necessary corporate action for the making of such conveyance has been taken and done.
  - (c) The Seller is a Montana \_\_\_\_\_ and the persons executing this affidavit and deed on behalf of the Seller are fully empowered to execute and deliver this affidavit and deed.
  - (d) Other (provide explanation) \_\_\_\_\_
2. The Seller has executed a deed to the above-indicated Purchaser/Mortgagor, conveying the Residence described and located at the Property Address indicated above.
3. The Seller has taken no action which would adversely affect the title to this property.
4. The Seller has not, either as principal or surety, executed any appeal bond or recognizance bond which is or might become a lien on the Residence. There are no suits pending or judgments in any court by or against the Seller affecting the Residence or in which a judgment lien could be acquired on the Residence. There are no bankruptcy proceedings pending by or against the Seller.
5. The Seller has taken no action which would create a lien or charge against the Residence, fixtures or property under the Uniform Commercial Code or otherwise.

6. The Seller further says \_\_\_\_\_. (Disclose any other items which adversely affect title to the Residence.)
7. The Acquisition Cost of the Residence to the Mortgagor as indicated on the Mortgagor's Affidavit is \$\_\_\_\_\_. I hereby certify the information indicated to calculate the Acquisition Cost to be true, correct and complete.
8. The contract of sale between the Seller and the Mortgagor represents all agreements between the parties involved in the real estate transaction.
9. I further certify that ( ) I AM or ( ) I AM NOT an employee, officer, director or member of the Montana Board of Housing (the "Board"), the Trustee or the Participant acting on behalf of the Board through which the Mortgagor is making the Mortgage Loan Application, or State Official, and that ( ) I AM or ( ) I AM NOT related by blood, marriage or adoption to any such persons. My position and/or relationship (if applicable) is \_\_\_\_\_.
10. The Seller voluntarily makes this affidavit to induce the purchaser to accept the deed to the Residence and to induce mortgagees, heirs, successors, assigns and all others to rely on the statements and representations herein made.
11. The Seller has not directly or indirectly provided funds or collateral to Mortgagor to cover, directly or indirectly, all or any part of Mortgagor's down payment for the purchase of the Residence.
12. The Seller has not attempted, directly or indirectly, to prohibit the Mortgagor from seeking financing from any particular lender, or attempted to require the Mortgagor to seek financing from a specific lender.
13. I hereby authorize the closing/settlement agent to provide the Montana Board of Housing with copies of the Closing Disclosure and any related closing documents.
14. I fully understand that each of the above statements is material and required, and declare under penalty of perjury, fraud and misrepresentation, which are felony offenses, that the above statements are true, accurate and complete.

\_\_\_\_\_  
 Seller Signature                      Date

\_\_\_\_\_  
 Seller Signature                      Date

\_\_\_\_\_  
 Seller's Printed Name

\_\_\_\_\_  
 Seller's Printed Name



## EXHIBIT D-1

### RECAPTURE NOTICE TO MORTGAGOR

[to be executed at time of Mortgage Loan application]

Your application for a Mortgage Loan, if determined eligible, will be financed with the proceeds of a tax-exempt qualified mortgage bond or a qualified mortgage credit certificate. As a result, pursuant to Section 143(m) of the Internal Revenue Code of 1986 (the "Code"), you may, at the time of disposition of the residence, be subject to a "recapture tax" for federal income tax purposes. The "recapture tax" applies to mortgage loans closed and mortgage credit certificates issued after December 31, 1990, where the proceeds or credit authority has been provided by bonds issued after August 15, 1986.

Generally, when you sell your home you may have to pay a recapture tax. The recapture tax may also apply if you dispose of your home in some other way. For instance, you may owe the recapture tax if you give your home to a relative.

In the following situations, no recapture tax will be due:

- (a) You dispose of your home later than nine years after you close your mortgage loan;
- (b) Your home is disposed of as a result of your death;
- (c) You transfer your home either to your spouse or to your former spouse incident to divorce and you have no gain or loss included in your income under Section 1041 of the Internal Revenue Code;
- (d) You dispose of your home at a loss; or
- (e) Your household income is less than the adjusted qualifying income for the tax year in which you dispose of the home.

The recapture amount, if any, can be expected to increase over time from \$0 on the closing date to a maximum of 6.25% of the original principal balance of your mortgage note after five years; such recapture amount declines from years six through nine on a similar pro rata basis. The recapture amount, if any, may not exceed the lesser of 50 percent of the gain you realize by the sale of your home or 6.25% of the original principal balance of your mortgage note.

You may deem it necessary to consult a tax advisor as to a potential future tax liability resulting from the federally imposed recapture tax provisions. The Montana Board of Housing and the Lender are available to provide you information on recapture tax provisions, but neither the Montana Board of Housing or the Lender takes any responsibility as a tax advisor or for the calculation of a recapture tax amount upon the disposition of the residence.

To continue the application process after reviewing the recapture tax provisions, please acknowledge your review and receipt of a copy of this Notice by signing, dating and returning

this notice to your Lender. This executed notice is needed for the request for a reservation of funds or credit authority.

---

Applicant

Date

---

Applicant

Date

**EXHIBIT D-2**

**NOTICE TO MORTGAGOR OF MAXIMUM  
RECAPTURE TAX AND OF METHOD TO  
COMPUTE RECAPTURE TAX ON SALE OF HOME**

[to be executed at Mortgage Loan Closing]

Mortgagor: \_\_\_\_\_ SSN: \_\_\_\_\_ - - \_\_\_\_\_

Co-Mortgagor: \_\_\_\_\_ SSN: \_\_\_\_\_ - - \_\_\_\_\_

Address of Residence Financed: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\*1. Mortgage Loan Closing Date: \_\_\_\_\_

\*2. "Federally Subsidized Amount" \_\_\_\_\_  
 (Principal Balance at Closing Date)

3. Highest Qualifying Income as of the Closing Date for the Area in which the Residence is Located:

(i) 2 or less (for small household) \_\_\_\_\_

(ii) 3 or more (for large household) \_\_\_\_\_

**TABLE**

	(Column 1) Holding Period Percentage	(Column 2) <u>Adjusted Qualifying Income</u>	
		Number of Family Members Living in Your Home at the Time of Sale	
		<u>2 or less</u>	<u>3 or more</u>
a) Before the first anniversary of closing	20%	\$ _____[*]/	\$ _____[*]
b) On or after the first anniversary of closing, but before the second anniversary of closing	40%	\$ _____[*]/	\$ _____[*]

c) On or after the second anniversary of closing, but before the third anniversary of closing	60%	\$ _____[*]/	\$ _____[*]
d) On or after the third anniversary of closing, but before the fourth anniversary of closing	80%	\$ _____[*]/	\$ _____[*]
e) On or after the fourth anniversary of closing, but before the fifth anniversary of closing	100%	\$ _____[*]/	\$ _____[*]
f) On or after the fifth anniversary of closing, but before the sixth anniversary of closing	80%	\$ _____[*]/	\$ _____[*]
g) On or after the sixth anniversary of closing, but before the seventh anniversary of closing	60%	\$ _____[*]/	\$ _____[*]
h) On or after the seventh anniversary of closing, but before the eighth anniversary of closing	40%	\$ _____[*]/	\$ _____[*]
i) On or after the eighth anniversary of closing, but before the ninth anniversary of closing	20%	\$ _____[*]/	\$ _____[*]

**NOTE: Closing means the date funds are disbursed to or for the benefit of the mortgagor and the mortgagor is liable for payment of the loan.**

**The numbers denoted with \* are important for you to retain. These numbers will be needed for you to complete the IRS Recapture Tax form upon the sale of your home. The responsibility to compute and pay any potential recapture tax is yours. Neither the lender nor the Board of Housing will be providing you with any further information regarding the recapture tax provisions.**

A. Introduction

1. General

When you sell your home you may have to pay a recapture tax as calculated below. The recapture tax may also apply if you dispose of your home in some other way. Any



reference in this notice to the “sale” of your home also includes other ways of disposing of your home. For instance, you may owe the recapture tax if you give your home to a relative.

## 2. Exceptions

In the following situations, no recapture tax is due and you do not need to do the calculations:

- (a) You dispose of your home later than nine years after you close your mortgage loan;
- (b) Your home is disposed of as a result of your death;
- (c) You transfer your home either to your spouse or to your former spouse incident to divorce and you have no gain or loss included in your income under Section 1041 of the Internal Revenue Code; or
- (d) You dispose of your home at a loss.

## B. Maximum Recapture Tax

The maximum recapture tax that you may be required to pay as an addition to your federal income tax is calculated by multiplying #2 Federally Subsidized Amount (\$\_\_\_\_\_) X 6.25% which equals a maximum recapture tax in the amount of \$\_\_\_\_\_.

## C. Actual Recapture Tax

The actual recapture tax, if any, can only be determined when you sell your home, and is the lesser of:

- 1. 50% of your gain on the sale of your home, regardless of whether you have to include that gain in your income for federal income tax purposes; or
- 2. Your recapture amount determined by multiplying the following three numbers:
  - (i) [\$insert the actual dollar amount resulting from the product of 6.25% multiplied by the highest principal amount of the mortgage loan] (the maximum recapture tax, as described in paragraph B above),
  - (ii) The holding period percentage, as listed in Column 1 in the Table, and
  - (iii) The income percentage, as described in paragraph D below.

#### D. Income Percentage

You calculate the income percentage as follows:

- (i) Subtract the applicable adjusted qualifying income in the taxable year in which you sell your home, as listed in Column 2 in the Table, from your modified adjusted gross income in the taxable year in which you sell your home.

Your modified adjusted gross income means your adjusted gross income shown on your federal income tax return for the taxable year in which you sell your home, with the following two adjustments:

- (a) Your adjusted gross income must be increased by the amount of any interest that you receive or accrue in the taxable year from tax-exempt bonds that is excluded from your gross income (under Section 103 of the Internal Revenue Code); and
  - (b) Your adjusted gross income must be decreased by the amount of any gain included in your gross income by reason of the sale of your home.
- (ii) If the amount calculated in (i) above is zero or less, you owe no recapture tax and do not need to make any more calculations. If it is \$5,000 or more, your income percentage is 100%. If it is greater than zero but less than \$5,000, it must be divided by \$5,000. This fraction, expressed as a percentage, represents your income percentage. For example, if the fraction is \$1,000/\$5,000, your income percentage is 20%.

#### E. Limitations and Special Rules on Recapture Tax

1. If you give away your home (other than to your spouse or ex-spouse incident to divorce), you must determine your actual recapture tax as if you had sold your home for its fair market value.
2. If your home is destroyed by fire, storm, flood, or other casualty, there generally is no recapture tax if, within two years, you purchase additional property for use as your principal residence on the site of the home financed with your original subsidized mortgage loan.
3. In general, except as provided in future regulations, if two or more persons own a home and are jointly liable for the subsidized mortgage loan, the actual recapture tax is determined separately for them based on their interests in the home.
4. If you repay your loan in full during the nine year recapture period and you sell your home during this period, your holding period percentage may be reduced under the special rule in section 143(m)(4)(C)(ii) of the Internal Revenue Code
5. Other special rules may apply in particular circumstances. You may wish to consult with a tax advisor or the local office of the Internal Revenue Service when

you sell or otherwise dispose of your home to determine the amount, if any, of your actual recapture tax. See section 143(m) of the Internal Revenue Code generally.

Provisions of the Internal Revenue Code are, in all respects, subject to change, revision, interpretation, revision or repeal by the Congress. The above is not intended to be other than a general summary of certain complicated provisions of the Code relating to the recapture tax provisions, and is not intended as a substitute for your review of such provision. Neither the Montana Board of Housing, the Lender, nor any other party to the Board's Program takes any responsibility in any way relating to the recapture tax.

The undersigned Mortgagor(s) has (have) received and read a duplicate copy of the foregoing “Notice to Mortgagor of Maximum Recapture Tax and of Method to Compute Recapture Tax on Sale of Home.”

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

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

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

## **EXHIBIT E**

### **MONTANA BOARD OF HOUSING INCOME DETERMINATION GUIDE FOR SINGLE FAMILY PROGRAMS**

#### Income Determination Definition

Gross Annual Income is the anticipated total income, from all sources and before taxes or withholding, of the mortgagor(s), the spouse of a mortgagor, and any other adult person who lives in the Residence being financed or who is secondarily liable on the Mortgage Loan. Based on income information received through the loan application process, household income shall be projected for the 12-month period following the date of application.

All income should be included, whether received by check, in cash, or in the form of goods and services. Income includes, but is not limited to, the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and any other compensation.

#### Eligible Borrower Gross Annual Limits

The Board establishes income limits for each program, based on the Internal Revenue Code of 1986, as amended. Lenders need to refer to each individual program's documents for Gross Annual Income Limits.

Those persons' incomes included in determining Gross Annual Income are those who are expected to live in the residence or who will be legally responsible for the payment of the loan for the residence to be financed by the Board. For example, two unrelated persons who are planning to live in the residence would provide data on both incomes if both are expected to sign the note or, through a side agreement, have arranged to share responsibility for payment. Similarly, a relative who gives a guarantee of the loan and expects to live in the residence must give income information. For these purposes, husbands and wives will be considered jointly responsible for the loan and residents of the dwelling, absent satisfactory evidence to the Board

of Housing which conclusively demonstrates otherwise and that the spouse is not a member of the armed services. By contrast, a guarantee by a relative, such as a parent or in-law, who does not intend to live in the residence except as an occasional guest, will not cause the inclusion of that relative's income. Similarly, the income of a parent, grandparent, or other relative (except a spouse) who qualifies as a dependent and is expected to live in the home, but will not be legally responsible for the loan, does not need to be included.

#### Income Calculations - Salaried Borrowers

In calculating the income of each borrower, the lender shall project each borrower's verified gross monthly income over twelve (12) months following the date the application is made. Projected salary increases which are verified by the employer shall be included in the income calculation. Overtime earnings shall be included when calculating the borrower's gross annual income. To calculate the amount of overtime earnings used to determine the borrower's income eligibility, the Lender shall use the total amount of overtime earnings received by the borrower for the preceding 12-month period. The Lender shall also use tips, fees, bonuses, dividends and profits, interest and insurance payments received by the borrower for the preceding 12-month period.

#### Income Calculations - Self Employed Borrower

Self employed persons shall submit their I.R.S. tax returns (including any depreciation schedules) for the previous two (2) years. Each borrower shall certify that each return is a complete, true and exact copy of the original submitted to the I.R.S. Business income that cannot be supported by an income tax return shall not be included in the income calculations.

If the borrower is a partner in a partnership or has an ownership interest in a small corporation (i.e., assets of one million dollars or less), the partnership or corporation returns, together with all schedules, must be submitted with the loan application.

The lender shall calculate the gross annual income for each self-employed borrower by averaging the reported net income plus declared depreciation expense for the previous two (2) years.

If the borrower is self-employed for less than two (2) years, the most recent year's tax returns with all schedules, plus a current year-to-date professionally prepared profit and loss statement, together with a one (1) year projected income statement must be submitted.

#### Commission Income

Income derived from commissions may be substantiated from at least two (2) years tax returns with all schedules. The average of the past two (2) years' commissions will be used to calculate income.

#### Other Income Included

As part of the determination of a borrower's eligibility, other income which the borrower must disclose on the Income eligibility Worksheet shall include:

Child support; alimony or separate maintenance payments; periodic payments from trusts, annuities, inheritance, insurance policies, pensions, retirement funds, and lotteries; all public assistance payments (excluding Medicaid and food stamps) including any amount by which educational grants, scholarships, and/or Veterans Administration educational benefits exceed expenses for tuition, fees, books, and equipment and reasonable rent and utility costs for a student living away from home; recurring investment income, not including gains on a one-time sale or any gains from the sale of the borrower(s) prior residence; all public assistance payments; payments in lieu of earnings, including social security, unemployment benefits, worker's compensation, severance pay, disability or death benefits; income from partnerships; undisbursed profits from business owned by borrower(s) in whole or part; regular cash contributions received from persons not living in the household.

#### Other Income Excluded

As part of the determination of a borrower's eligibility, the following types of income shall not be included:

Income from employment of children (including foster children) under the age of 18 years; payments received for the care of foster children; lump sum additions to household assets, such as inheritances, insurance payments (including payments under health and accident insurance),

settlement for personal or property losses; amounts received by the household that are specifically for, or in reimbursement of, the costs of medical expenses for any household member; income of a live-in aide; amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student provided that any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income; amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program.

**EXHIBIT F**  
**VA-REQUIRED DISCLOSURE STATEMENT**

Your home is being financed with a mortgage made available with the assistance of the Montana Board of Housing. This mortgage is made at an interest rate below what is usually being charged. Because of this, you cannot sell your home to a person ineligible for assistance from the Board of Housing, unless you pay your loan in full. If you sell your home to a party ineligible for the Board of Housing's assistance and allow the buyer to make your payments for you (assume your loan), the Board may refuse to allow the sale and demand immediate full repayment of the loan. This could result in foreclosure or repossession of the property. If the lender takes your home through a foreclosure of the mortgage because of this, VA may have to pay a claim to the Board of Housing for any loss incurred on your loan. You may then be obligated to the VA for any claim paid by the VA to the Board of Housing.

You may avoid such actions by paying your loan in full when you sell your home or by making certain that any person who purchases your home and takes over your payments meets the necessary qualifications established by the Board of Housing. Those requirements are:

1. The federal tax law requires the residence to be used as the borrower's principal residence.
2. The federal tax law prohibits Mortgage Loans to borrower(s) who owned a principal residence in the three-year period preceding the execution date of the mortgage loan, unless the residence is located in a "targeted area" designated by the Board of Housing.
3. The maximum purchase price of the residence is subject to the most recent purchase price limitation, published by the IRS from time to time and adopted by the Board of Housing. The Mortgage Lender or Veteran may inquire at the Board's office for current purchase price limitations.
4. The gross family income of the purchaser may not exceed the applicable percentage of applicable median family income, as provided in Section 143(f) and (I)(2) of the Internal Revenue Code.
5. No assumptions will be permitted unless the above requirements are met and prior approval of the Board is obtained.

---

Dated

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Veteran's Signature



**EXHIBIT G**

**FHA-REQUIRED NOTICE TO BUYERS**

Your home purchase is being financed with a mortgage made available with the assistance of the Montana Board of Housing (hereinafter referred to as the "Board"). This mortgage is made at an interest rate below what is usually being charged. Because of this, your mortgage provides that you cannot sell your home to a person ineligible for assistance from the Board, unless you pay your loan in full. If you sell your home to a party ineligible for the Board's assistance, the Board may demand immediate full repayment of the loan. This could result in foreclosure of your mortgage and repossession of the property. In addition, if you rent the property or committed fraud or intentionally misrepresented yourself when you applied for the loan, the lender may foreclose your mortgage and repossess the property. If the lender takes your home through a foreclosure of the mortgage because of these reasons, HUD will not be able to help you.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
(Name of Borrower)

\_\_\_\_\_  
Dated

\_\_\_\_\_  
(Name of Borrower)

**EXHIBIT H**

**QUALIFIED REHABILITATION LOAN AFFIDAVIT**

**MORTGAGOR NAME(S):** \_\_\_\_\_

**ADDRESS OF PROPERTY:** \_\_\_\_\_

(Rehabilitation Costs Summarized on Attached Schedule A.)

	<b>Dates of Inspection by Participant Lender:</b>	<b>Comments:</b>
1.	_____	_____
2.	_____	_____
3.	_____	_____

\*\*\*\*\*

**Rehabilitation Computations:**

1. Total Rehabilitation Costs  
(See Schedule A): \$ \_\_\_\_\_
  
2. Existing First Mortgage Amount\*  
(or, if lower, Adjusted Basis (as determined (in #4 below): \$ \_\_\_\_\_
  
3. **Total Loan Amount eligible for a Qualified Rehabilitation Loan equals Line 1 plus Line 2:** \$ \_\_\_\_\_
  
4. Adjusted Basis of Residence  
(determined without regard to deferred gain on sale of any prior residence)
  - (a) Original purchase price of residence \$ \_\_\_\_\_
  - (b) Recording fees paid by you upon purchase of residence \$ \_\_\_\_\_
  - (c) Legal fees paid by you upon purchase of residence \$ \_\_\_\_\_

- (d) Costs of title survey and title insurance paid by you upon purchase of residence \$ \_\_\_\_\_
- (e) Transfer taxes paid by you upon purchase of the residence \$ \_\_\_\_\_
- (f) The cost of capital improvements of the residence incurred by you after you purchased the residence \$ \_\_\_\_\_

**Adjusted Basis (without regard to deferred gain) [(sum of (a) through (f)]** \$ \_\_\_\_\_

5. Purchase Price Limitation:

- (a) Adjusted Basis of Residence in #4 above \$ \_\_\_\_\_
- (b) Amount of gain on sale of prior residence that was deferred pursuant to Section 1034 of the Internal Revenue Code \$ \_\_\_\_\_
- (c) Total Rehabilitation Costs (Schedule A): \$ \_\_\_\_\_
- (d) Adjusted Basis (determined with regard to deferred gain) of residence as of Completion of Rehabilitation [(Line (a) minus Line (b) plus Line (c)]: \$ \_\_\_\_\_
- (e) Purchase Price Limits: Line (d) must not exceed whichever of the following amounts is applicable
  - (i) Non-targeted Area \$ \_\_\_\_\_
  - (ii) Targeted Area \$ \_\_\_\_\_

6. 25% Expenditure Requirement–  
(Line 5(d) times 25%): \$ \_\_\_\_\_

**[Line 5(c) must be equal to or greater than Line 6.]**

\*The Mortgagor(s) represent(s) that the existing indebtedness was incurred in connection with the acquisition or previous improvement of the residence and that no portion of such indebtedness represents the financing or refinancing of consumer debt or equity.

The costs set forth in Schedule A are a complete listing of all rehabilitation costs incurred in connection with the rehabilitation of the Property at the address set forth above:

The Mortgagor(s) are the first residents of the Property after completion of rehabilitation.

Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Mortgagor-Print Name)

\_\_\_\_\_  
(Name of Participant/Lender)

\_\_\_\_\_  
(Mortgagor-Signature)

\_\_\_\_\_  
(Participant/Lender Representative-Signature)

\_\_\_\_\_  
(Mortgagor-Print Name)

\_\_\_\_\_  
(Mortgagor-Signature)

[Notary for Mortgagor]

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS \_\_\_\_ DAY OF  
\_\_\_\_, \_\_\_\_\_.

MY COMMISSION EXPIRES: \_\_\_\_\_  
\_\_\_\_\_  
(NOTARY PUBLIC)

[Notary for Mortgagor]

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS \_\_\_\_ DAY OF  
\_\_\_\_, \_\_\_\_\_.

MY COMMISSION EXPIRES: \_\_\_\_\_  
\_\_\_\_\_  
(NOTARY PUBLIC)

[Notary for Participant/Lender]

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS \_\_\_\_ DAY OF  
\_\_\_\_, \_\_\_\_\_.

MY COMMISSION EXPIRES: \_\_\_\_\_  
\_\_\_\_\_  
(NOTARY PUBLIC)

## **SCHEDULE A**

Participant/Lender certifies that the following are true, complete and correct rehabilitation costs associated with the qualified rehabilitation loan.

### **SUMMARY OF REHABILITATION COSTS\*:**

**EXHIBIT I**

**AFFIDAVIT OF THE APPRAISER/ARCHITECT CONFIRMING  
QUALIFIED REHABILITATION OF PROPERTY**

[Delivered Subsequent to Rehabilitation]

STATE OF MONTANA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

1. The subject property was built in \_\_\_\_\_ (Month) \_\_\_\_\_ (Year)
2. Date of subject property's first recorded mortgage: \_\_\_\_\_ (Month) \_\_\_\_\_ (Year)
3. The year the subject property was first assessed for property taxes: \_\_\_\_\_ (Year)
4. Date Rehabilitation began (must be at least 20 years after the date that the residence was first placed in service): \_\_\_\_\_ (Month) \_\_\_\_\_ (Year)
5. 75% or more of its existing external walls have been retained in place as internal or external walls. Also, 50% or more of existing external walls are retained as external walls, and 75% or more of existing internal structural framework of such building is retained in place.
6. Rehabilitation Expenditures in connection with the property total at least \$ \_\_\_\_\_

\_\_\_\_\_  
(Signature of Appraiser/Architect)

\_\_\_\_\_  
(Name of Appraiser/Architect)

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Date)

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, \_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
(NOTARY PUBLIC)

**EXHIBIT J**

**MONTANA BOARD OF HOUSING**

**EARLY DELINQUENCY COUNSELING FORM**

**Borrower's Authorization for Mortgage Counseling**

TO WHOM IT MAY CONCERN:

If I fail to make any mortgage payment as agreed, I understand that the holder or servicer of my mortgage loan may refer me to a third-party counseling organization which will advise me about finding ways to meet my mortgage obligation. I hereby authorize the holder or servicer to release certain information related to the servicer's own experience with me to such third-party counseling organization and request that the counseling party contact me.

I further hereby authorize the third-party counseling organization to make a recommendation about appropriate action to take with regard to my mortgage loan, which may assist the servicer in determining whether to restructure my loan or to offer other extraordinary services that could preserve my long-term homeownership.

\_\_\_\_\_  
Borrower Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Borrower Signature

\_\_\_\_\_  
Date



## EXHIBIT K

### POLICY ON LAND AS PERCENT OF APPRAISED VALUE (Approved by the Board of Trustees September 10, 2007)

If the value of land appurtenant to a residence is over 35% of the appraised value of the property for new construction, the Mortgage Loan for the related property is allowed for purchase by the Board if the property is:

- a. within the city limits;
- b. the property is served by a municipal water system or a public water system\* approved by the Department of Environmental Quality (DEQ) for which there are no enforcement actions pending AND a municipal sewer system or a public wastewater system approved by the DEQ for which there are no enforcement actions pending; or
- c. the property is served by a municipal sewer system or a public wastewater system approved by the DEQ for which there are no enforcement actions pending, where the system also serves community facilities including schools and commercial buildings;

\* Public water or sewer system is defined by DEQ regulations as a system that serves 15 or more families or 25 or more persons daily.

New construction and existing properties must still meet the basic property criteria already in place:

- a. Lot cannot be subdivided;
- b. Easements are in place allowing access to the property, if applicable;
- c. Property is not income producing;
- d. Property complies with the Small Tract Financing Act.

**Simplified Explanation:** This policy eliminates the 35% rule for existing properties. New construction properties that exceed 35% land to appraised value must meet one of three tests:

1. must be within the incorporated limits of a city or town; or
2. must be on public sewer that also serves community facilities including schools and commercial buildings; or
3. Must be on both public water and sewer (See above).

## **EXHIBIT L**

### **HAZARD INSURANCE COVERAGE POLICY**

#### **General Provisions:**

The deductible for hazard insurance, flood insurance (if applicable) and townhouse and condominium insurance on such policies shall not exceed the amount stated in the Terms and Conditions.

Flood insurance shall be “life of loan.”

#### **Stick-built and Manufactured Homes (effective August 9, 2007):**

Servicers shall ensure that the borrower carries hazard insurance coverage in amounts at least equal to the full insurable value of the premises sufficient to prevent the Mortgagor from being a co-insurer. A borrower becomes a “co-insurer” by default when the replacement coverage on a structure is not sufficient to return the structure to its pre-loss condition and the borrower has to pay the costs not covered by the hazard insurance policy. MBOH requires that the borrower have sufficient insurance coverage so that the borrower does not become a “co-insurer” by default.

#### **Condominium Units (effective October 4, 2007)**

1. The condominium association must have a master hazard insurance policy covering the condominium project’s common elements that includes the following language: “MBOH, its successors and assigns, is the mortgagee for \_\_\_\_\_ (insert unit designation, e.g. unit number or address, to identify the specific unit financed by MBOH mortgage).” Written verification that this language is in the master policy must be submitted to MBOH.

2. Information from the master policy regarding the amount of insurance coverage for the common elements covered by the master policy and the total number of units covered by the amount of insurance coverage must be submitted in writing to MBOH.

3. A borrower must have individual hazard insurance coverage on the unit’s “interior fixtures and amenities” or similarly worded coverage sufficient to cover the replacement costs for the interior of the unit. Insurance policies must indicate a value for the replacement coverage and the level of coverage must be adequate and not leave the borrower as a “co-insurer”<sup>\*</sup> by default.

4. MBOH must be listed as the mortgagee on the hazard insurance policy for the unit.

5. If the lender can demonstrate that the condominium master policy covers the unit’s “interior fixtures and amenities” to a level adequate to prevent the borrower by default being a “co-insurer”<sup>\*</sup> of the property, the requirement for individual hazard insurance on the unit’s interior fixtures and amenities may be waived at MBOH discretion.

**NOTE:** MBOH strongly encourages lenders to urge borrowers to have loss assessment coverage for \$10,000 to \$25,000 as part of their hazard insurance. Condo associations often choose not to file a claim for an expense, and assess the expense to the individual owners on a pro rata basis instead. Loss assessment coverage prevents these additional payments from falling on the new homeowner.

\* A borrower becomes a “co-insurer” by default when the replacement coverage on a unit is not sufficient to return the unit to its pre-loss condition and the borrower has to pay the costs not covered by the master policy and individual hazard insurance policy. MBOH requires that the borrower have sufficient insurance coverage so that the borrower does not become a “co-insurer” by default.

**EXHIBIT M**  
**QUALIFICATION AS “VETERAN”**  
**WITHIN THE MEANING OF 38 U.S.C. SECTION 101**

In order to qualify as a “veteran” within the meaning of 38 U.S.C. Section 101, *both* (1) and (2) below must be satisfied:

- (1) Borrower must have served in the active military, naval or air service in one of the following capacities (must mark (a), (b) or (c)):

\_\_\_ (a) **Active duty** in one of the following manners:

\_\_\_ (i) full-time duty (other than active duty for training) in the Armed Forces (United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components);

\_\_\_ (ii) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (on or after July 29, 1945, or before that date if under circumstances affording entitlement to “full military benefits”);

\_\_\_ (iii) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor the Coast and Geodetic Survey (on or after July 29, 1945, or before that date if while on transfer to one of the Armed Forces or if while assigned to duty on a project for one of the Armed Forces in an area determined by Secretary of Defense to be of immediate military hazard during time of war or national emergency declared by President or if in the Philippine Islands on December 7, 1941 and continuously in such islands thereafter; or

\_\_\_ (iv) service as a cadet in the United States Military, Air Force or Coast Guard Academy, or as a midshipman at the United States Naval Academy; or

\_\_\_ (v) authorized travel to or from such duty or service listed in (a)(i) through (iv) above.

\_\_\_ (b) **Active duty for training** in one of the following manners *if* the member was disabled during such period from a disease or injury incurred or aggravated in the line of duty (specifically excludes any duty performed as a temporary member of the Coast Guard Reserve):

- \_\_\_ (i) full-time duty for training purposes in the Armed Forces Reserves (Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard of the United States and Air National Guard of the United States);
- \_\_\_ (ii) full-time duty for training purposes as a commissioned officer of the Reserve Corps of the Public Health Service (on or after July 29, 1945, or before that date if under circumstances affording entitlement to “full military benefits”);
- \_\_\_ (iii) full-time duty for members of the Army National Guard or Air National Guard of any State under Title 32, Section 316 (detail of members of Army National Guard for rifle instruction of civilians), Section 502 (required drills and field exercises), Section 503 (participation in field exercises), Section 504 (National Guard schools and small arms competitions), or Section 505 (Army and Air Force schools and field exercises);
- \_\_\_ (iv) duty performed as a member of a Senior Reserve Officers’ Training Corps program when ordered to such duty for the purposes of training or a practice cruise under Chapter 103 of Title 10 for a period of not less than 4 weeks and which must be completed by the member before the member is commissioned; or
- \_\_\_ (v) authorized travel to or from such duty listed in items (b)(i) through (iv) above.
- \_\_\_ (c) **Inactive duty training** in one of the following manners *if* the member was disabled during such period from an injury incurred or aggravated in the line of duty or from an acute myocardial infarction, a cardiac arrest or a cerebrovascular accident occurring during such training (specifically excludes any work or study performed in connection with correspondence courses, attendance at an educational institution in an inactive status or duty performed as a temporary member of the Coast Guard Reserve):
  - \_\_\_ (i) duty (other than full-time duty) prescribed for Reserves (Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard of the United States, Air National Guard of the United States and commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under Section 206 of Title 37 or any other provision of law;

- \_\_\_ (ii) special additional duties authorized for Reserves (Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard of the United States, Air National Guard of the United States and commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with prescribed training or maintenance activities of the units to which they are assigned; or
- \_\_\_ (iii) training (other than active duty for training) by a member of, or applicant for membership (as defined in Section 8140(g) of Title 5) in the Senior Reserve Officers' Training Corps prescribed under Chapter 103 of Title 10.

- (2) Borrower has been discharged or released from the service referenced in (1) above under conditions other than dishonorable, including retirement or the satisfactory completion of the period of active military, naval or air service required if, due to enlistment or re-enlistment, discharge or release at the time of such completion was not awarded but was earned and would have been awarded under conditions other than dishonorable.

I hereby state under oath that each of the statements and the information in this worksheet is material and is required to obtain a Mortgage Loan and declare under penalty of perjury, fraud and misrepresentation, which are felony offenses, that the above statements are true, accurate and complete.

\_\_\_\_\_

Borrower

\_\_\_\_\_

Date

## **EXHIBIT N**

### **CONDOMINIUM MORTGAGE PURCHASE APPROVAL GUIDELINES**

MBOH will consider purchase of a mortgage only for a condo unit that fits all of the following criteria:

1. Unit approval by FHA or Fannie Mae:
2. Percentage of units in project owned by MBOH:
  - a. Effective October 8, 2007, no more than 25% of the total number of condo units in any project may be financed by MBOH,
  - b. Exceptions may be made by MBOH staff primarily for disabled access units.

**NOTE:** A mortgage purchase for a unit in a condo project of 4 units or fewer that does not meet the above criteria may be purchased on a case-by-case basis at the discretion of MBOH staff.

#### **Reservation of Condo Units:**

Reservations for mortgage purchases for condo units will no longer be automatic. Reservations in projects that exceed 25% units financed by MBOH will not be approved. Lenders must submit the following at the time of reservation request for review by staff:

1. Proof of current approval from FHA or Fannie Mae.