

**WEST VIRGINIA HOUSING DEVELOPMENT FUND
QUALIFIED MORTGAGE BOND PROGRAM**

**Agreement
(Revised 3-11)**

PROGRAM LOAN PURCHASE AGREEMENT

THIS AGREEMENT, dated as of the ____ day of _____, 20____, between the **WEST VIRGINIA HOUSING DEVELOPMENT FUND**, a public body corporate and governmental instrumentality of the State of West Virginia (hereinafter referred to as the “Housing Development Fund”), and the institution designated as “Participating Lender” (hereinafter referred to as the “Participating Lender”) in the execution blank below.

WHEREAS, the Housing Development Fund, under the provisions of West Virginia Code §31-18-1, *et seq.* (the “Act”), is authorized to purchase loans (hereinafter collectively called “Program Loans”) for the financing of residential housing for occupancy by persons meeting eligibility requirements established pursuant to the Act; and

WHEREAS, the Housing Development Fund may from time to time, pursuant to the provisions of the Act, sell bonds and notes to finance the purchase of Program Loans; and

WHEREAS, the Housing Development Fund expects the Participating Lender, from time to time, to offer Program Loans for purchase by the Housing Development Fund; and

WHEREAS, the Housing Development Fund is willing to purchase from the Participating Lender from time to time Program Loans that are offered for purchase by the Participating Lender, in amounts determined by the Housing Development Fund and that meet the terms and conditions established for the Program by the Housing Development Fund as set forth in the Program Standards and the Procedural Guide promulgated for the Program, the provisions of both of which are hereby incorporated herein by reference. Capitalized terms are used in this Agreement in accordance with the definitions contained in the Procedural Guide.

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter contained and the mutual benefits to be derived herefrom, it is hereby agreed as follows:

Section 1. GENERAL REPRESENTATIONS OF PARTICIPATING LENDER.
The Participating Lender hereby represents and warrants to the Housing Development Fund as follows:

- (1) it has and will at all times during the term of this Agreement maintain adequate capital and personnel for the proper transaction of its business and the performance of its obligations in connection with this Agreement;
- (2) if a Program Loan submitted for purchase hereunder is an FHA or VA Loan (as defined in the Procedural Guide), the Participating Lender will be an FHA- or VA-approved mortgagee, as appropriate;
- (3) the Participating Lender is not under any cease and desist order or other order of a similar nature, temporary or permanent, of any federal, state or local authority, nor are any proceedings pending or to its knowledge contemplated which would, if successful, lead to the issuance of such order;

- (4) this Agreement is the valid and binding agreement of the Participating Lender, enforceable in accordance with its terms, the making and performance of which have been duly authorized by all necessary corporate and other actions and will not constitute a violation of any law or judicial or administrative requirement, or of the charter or bylaws of the Participating Lender, or a default under any agreement or instrument to which it is a party by which it is bound or affected
- (5) all consents, licenses and approvals required for the making or performance of this Agreement by the Participating Lender have been obtained and are in effect; and
- (6) Participating Lender shall comply with all applicable laws and regulations, including but not limited to the Customer Identification Program under the federal USA Patriot Act, if applicable.

Section 2. RESERVATIONS. The Housing Development Fund may from time to time require the Participating Lender, as a condition of the Housing Development Fund's obligation to purchase Program Loans, to obtain a written reservation of a specified amount of Program Loans which it will agree to sell, which reservation will be made subject to such procedures as the Housing Development Fund may prescribe.

Section 3. PURCHASE PRICE. The purchase price of each Program Loan purchased by the Housing Development Fund shall be determined as set forth in the reservation from time to time issued to the Participating Lender, or if there is no reservation, as specified from time to time by the Housing Development Fund.

Section 4. PROGRAM LOAN TERMS. The maximum interest rate and term for the Program Loan shall be specified from time to time by the Housing Development Fund.

Section 5. SALE OF SERVICING. The Participating Lender agrees to sell the servicing of all Program Loans to the Housing Development Fund for such servicing release fees as may be determined from time to time by the Housing Development Fund.

Section 6. ORIGATION AND DISCOUNT FEES. The Lender may collect from the borrower at closing and retain an origination fee and a discount fee not exceeding such amounts as shall be determined from time to time by the Housing Development Fund.

Section 7. PROGRAM LOAN WARRANTIES. The Participating Lender hereby represents and warrants as to each and every Program Loan purchased by the Housing Development Fund pursuant to this Agreement as follows:

- (1) the Program Loan has been made to an Eligible Borrower to finance an Eligible Single-Family Dwelling, all in accordance with the Program Standards and Procedural Guide;
- (2) the Program Loan meets the terms and conditions of, and has been processed in accordance with, the Procedural Guide;
- (3) the Participating Lender has no knowledge of any material misstatement or omission in the documents and information provided by or on behalf of the

Eligible Borrower or the Participating Lender in connection with the Program Loan;

- (4) the Acquisition Cost (as defined in the Procedural Guide) was not at the time of closing in excess of the limitation established in the Procedural Guide;
- (5) all hazard, title and mortgage insurance policies required to be obtained pursuant to the Procedural Guide have been obtained and at the time of purchase of the Program Loan by the Housing Development Fund are in full force and effect;
- (6) the terms and conditions of, and descriptions contained in the plat of survey, deed, deed of trust, title insurance policy, mortgage insurance policy and other related Program Loan Documents are consistent with the application of the Eligible Borrower and with each other; all signatures on such documents are genuine; and the promissory note and deed of trust and all contracts or agreements entered into in connection with the Program Loan are valid and binding upon the parties thereto and enforceable against each party;
- (7) the Participating Lender has not advanced funds (or directly or indirectly induced or solicited any advance of funds by another person) for the payment of principal, interest or escrow payments required to be made pursuant to the Program Loan;
- (8) the unpaid principal balance of and interest rate on the Program Loan and all other information set forth on the Purchase Statement have been accurately stated, and the amount of the principal balance and interest thereon is justly due and owing without defense or offset;
- (9) all documents required to be recorded or filed in a public office to perfect the lien securing the Program Loan have been duly and timely filed or recorded by the Participating Lender in the proper public office in order to give constructive notice thereof to all subsequent purchasers or encumbrancers;
- (10) the lien securing the Program Loan has not been satisfied, subordinated or impaired, in whole or in part, except for the payment of principal and interest as disclosed on the Purchase Statement; no part of the mortgaged property has been released therefrom; no interest or participation in the Program Loan has been assigned; and the Participating Lender has not executed any instrument of release, cancellation, subordination or satisfaction with respect to the Program Loan;
- (11) the terms, covenants and conditions of the Program Loan have not been changed in any respect which would materially affect the value, validity, enforceability, prompt payment of the Program Loan, or the security of the lien of the Participating Lender;
- (12) the Program Loan is not subject to any existing security interest, assignment, or pledge, and the Participating Lender has good title thereto and full right and authority to assign and transfer the same and to endorse and deliver all required documents, free and clear of encumbrances;
- (13) on the Delivery Date, the Participating Lender has met all eligibility requirements provided in the Procedural Guide;
- (14) no payment required by the Program Loan is delinquent, no event of default is continuing, and no event has occurred and is continuing which would with the passage of time or giving of notice thereof constitute an event of default; and
- (15) the Program Loan complies with each and every requirement of the Internal Revenue Code, and the regulations issued pursuant thereto.

Section 8. EFFECT OF COVENANTS; FURTHER ACTIONS. All the Participating Lender's representations, warranties and agreements contained in this Agreement will be continuing and will be deemed renewed and restated upon the delivery of each Program Loan and will remain operative and in full force and effect regardless of (i) any investigations made by or on behalf of the Housing Development Fund; (ii) the purchase, or payment made in respect to the purchase, of any Program Loan, or (iii) the termination of this Agreement. The Participating Lender agrees that it will, at its own expense, execute all other documents and take all other steps necessary or required from time to time by the Housing Development Fund to confirm or give effect to the covenants, representations and warranties contained in this Agreement. The Participating Lender further agrees to be bound by all amendments to the Program Standards and Procedural Guide upon written notice thereof.

Section 9. REMEDIES.

(A) In the event that, in the sole judgment of the Housing Development Fund, a Program Loan does not comply with the requirements of the Internal Revenue Code and regulations issued pursuant thereto, any representation made in this Agreement proves to have been untrue when made or at the time of delivery of a Program Loan to the Housing Development Fund, or in the event the Participating Lender defaults in the observance or performance of any covenants or conditions in this Agreement or any requirements contained in the Procedural Guide, the Housing Development Fund may, at its option, rescind the purchase of any Program Loan delivered, whereupon the Participating Lender shall repurchase such Program Loan from the Housing Development Fund and pay, within ninety days from the date of tender, the sum of the principal balance due on such Program Loan, all interest accrued but unpaid and any costs or expenses incurred by the Housing Development Fund in connection with the Program Loan. Upon rescission, the Housing Development Fund shall reassign its interest in all appropriate Program Loan Documents to the Participating Lender and shall hold the Participating Lender harmless from any action taken by the Housing Development Fund which has impaired the lien securing the Program Loan.

(B) If after the delivery thereof to the Housing Development Fund and during the term of a Program Loan, the Housing Development Fund or its counsel find any substantial error, omission, title objection, or other defect in any Program Loan Documents that could have the effect of invalidating or jeopardizing the enforceability of or the lien securing the Program Loan or rendering the title to the mortgaged premises unmarketable, or which could cause financial loss or other damages to the Housing Development Fund, the Participating Lender shall, within ninety days of notice of such error, omission, title objection or other defect, either cause the same to be corrected at the expense of the Participating Lender, or the Housing Development Fund may rescind the purchase of the Program Loan affected upon the same basis as set forth in subsection (A) above. The examination of said Program Loan Documents by the Housing Development Fund and its counsel shall not constitute an acceptance of the validity, legality, and efficacy of any of said required documents or the lien securing such Program Loan, and the Participating Lender waives its right to assert laches, estoppel and waiver or any statute of limitation that could otherwise be raised in defense to any rescission or damage claim by the Housing Development Fund.

(C) In the event that a Program Loan is purchased by the Housing Development Fund subject to the Participating Lender's right, as stated in the Procedural Guide, to deliver the loan

for purchase without having submitted certain Program Loan Documents, the Housing Development Fund may rescind the purchase of the Program Loan as set forth in subsection (A) above if the deferred documents are not submitted within the time limit specified by the Housing Development Fund.

(D) In addition to the remedies set forth above, the Housing Development Fund shall have all remedies available at law or in equity including, but not limited to, rescission of this Agreement and equitable relief by way of injunction (mandatory or prohibitory) to prevent the breach of any provisions of the Agreement or to enforce performance thereof. Upon termination of this Agreement the Participating Lender shall have no further rights hereunder; but no such termination shall affect the rights of the Housing Development Fund pursuant to (A), (B), (E), or (F) of this section.

(E) In addition to the remedies set forth above, the Participating Lender shall indemnify the Housing Development Fund against and hold it harmless from any loss, damages, penalties, fines, forfeitures, legal fees and related costs that the Housing Development Fund may sustain or incur as a result of any violation of federal or state law or regulation by the Participating Lender (including without limitation, Truth in Lending, Equal Credit Opportunity Act, and RESPA) or any failure on the part of the Participating Lender to properly perform its services, duties or obligations in a timely manner under this Agreement or the Procedural Guide.

(F) All of such remedies shall be cumulative, and the exercise by the Housing Development Fund of any one or more of them shall not in any way alter or diminish the rights of the Housing Development Fund to any other remedy provided in this Agreement or by law. In the event of any such default or breach by the Participating Lender of this Agreement, the Housing Development Fund shall be entitled to reimbursement from the Participating Lender of all its costs in enforcing any of such terms.

Section 10. APPLICABLE LAW. This Agreement is made and entered into in the State of West Virginia and all questions relating to the validity, construction, performance, and enforcement hereof shall be governed by the laws of the State of West Virginia. The Participating Lender hereby consents to the exclusive jurisdiction of and venue in the Circuit Court of Kanawha County, West Virginia, for any proceeding in connection with this Agreement.

Section 11. ASSIGNMENT. This Agreement may not be assigned by the Participating Lender without the prior written consent of the Housing Development Fund, and in the event of any attempted assignment thereof without such written consent the Housing Development Fund may, at its option, terminate this Agreement, but such termination shall not relieve the Participating Lender of its obligation hereunder.

Section 12. SUCCESSORS AND ASSIGNS. This Agreement and all obligations and rights arising hereunder shall bind and inure to the benefit of the Housing Development Fund and the Participating Lender and their respective successors and permitted assigns.

Section 13. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same Agreement.

Section 14. TERMINATION. Except as otherwise provided for in the Agreement, this Agreement may be terminated by either party upon written notice, effective upon receipt, except during any period in which the Participating Lender is obligated to purchase Program Loans pursuant to a reservation referred to above.

Section 15. AGREEMENT CONDITIONED UPON APPROVAL. This Agreement shall be a binding obligation of the Housing Development Fund upon its execution and delivery of a copy of the same to the Participating Lender, as provided above.

Section 16. 1099 AND OTHER FILING REQUIREMENTS FOR REAL ESTATE CLOSING. The Participating Lender shall undertake, or see that some other appropriate party undertakes, to meet all information filing requirements of the Internal Revenue Code of 1986, as amended, including but not limited to the requirements of §6045(e) of the Code with respect to real estate transactions, including completion and filing of Internal Revenue Service Form 1099-S and any other forms or filing required of FHA or VA. In the event the Housing Development Fund is determined to be a “real estate broker” or otherwise to be responsible for filing requirements with respect to any real estate transaction, the Participating Lender shall indemnify the Housing Development against and hold it harmless from any and all liabilities claims, costs, fees or penalties, including those imposed pursuant to the provisions of the §6721 of the Code.¹

IN WITNESS WHEREOF, the parties hereto have set their hands as of this date and year first set forth above.

WEST VIRGINIA HOUSING DEVELOPMENT FUND

By: _____
(Authorized Representative of WVHDF)

By: _____
(Name of Participating Lender) (Signature)

By: _____
(Please print name)

Title _____

¹ Not reviewed by Jackson & Kelly