

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

STATE OF MONTANA BOARD OF INVESTMENTS
ONE TO FOUR FAMILY RESIDENTIAL MORTGAGE PROGRAM
(FHA INSURED, VA GUARANTEED, CONVENTIONAL OR
CONVENTIONAL INSURED LOANS)

SERVICING AGREEMENT

THIS AGREEMENT is made and entered into as of _____, by and between _____ (Participant) and Montana Board of Investments (the Board).

WITNESSETH:

WHEREAS, the Board is an agency of the State of Montana; and

WHEREAS, the Board has authority under the Unified Investment Program to invest all state funds and has implemented a Montana Mortgage Purchase Program; and

WHEREAS, the Board purchases certain mortgage notes secured by a mortgage or deed of trust or other security agreements as enumerated in the Letter of Commitment previously executed or in separate letters which by mutual agreement are made subject to the terms hereof, and which mortgage notes, mortgages and deeds of trust are hereinafter sometimes referred to as the "Mortgage Loans"; and

WHEREAS, the Participant is an approved financial institution for purposes of the Board's programs; and

WHEREAS, the Participant is a _____ duly organized and existing under the laws of _____; and with its principal office at _____; and

WHEREAS, the Participant desires to service the Mortgage Loans and to manage the premises in the event of foreclosure of the Mortgage Loans; and

WHEREAS, the Participant and the Board agree that, if the Board decides to participate in or purchase a Loan offered by Participant, such participation and purchase shall be upon the terms and conditions set forth herein; and

WHEREAS, the Participant and the Board are both authorized to enter into this Servicing Agreement for the purpose of defining each party's rights and obligations under the Loan Participation and Loan Purchase Program;

NOW THEREFORE, in consideration of the foregoing, the parties hereto agree and covenant as follows:

Section 1 Purchase and Servicing of Mortgage Loans, Definitions, Exhibits and Policy

1.1 **Purchase of Mortgage Loans.** The Board will purchase Mortgage Loans from Participants under the terms and conditions set forth in this Servicing Agreement. The Board reserves the right to refuse to purchase any loan based on the Board's credit evaluation and/or legal document review.

1.2 **Servicing of Mortgage Loans.** The terms and conditions of this Servicing Agreement shall apply to the servicing of all loans serviced by the Participant, whether those loans were originated prior to or after the effective date of this Servicing Agreement.

1.3 **Definitions.** As used in the Servicing Agreement, the following terms will have the meanings as defined herein:

- a. **Board** means the Montana Board of Investments
- b. **Participant** means a bank, trust company, savings and loan association or other financial institution authorized to transact business in the State and deemed eligible by the Board to participate as a

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

seller and/or servicer of Mortgage Loans for the Board and also includes the Board to the extent permitted by law, and specifically includes the participant identified on the first page of this Servicing Agreement.

- c. **Servicing Agreement** means this agreement
- d. **FHA** means the Federal Housing Administration
- e. **VA** means the Department of Veteran Affairs (formerly the Veterans Administration)
- f. **FHLMC Manual** means the Freddie Mac Single-Family Seller/Servicer Guide
- g. **Current Interest Rate** means the interest rate stated in the relevant mortgage note and any subsequent modifications thereof
- h. **Mortgage Loan Policy** means the Montana Board of Investments mortgage loan program policy specified in Section 1.5 below
- i. **FDIC** means the Federal Deposit Insurance Corporation
- j. **NCUA** means the National Credit Union Administration
- k. **PMI** means Private Mortgage Insurance

Words and terms used herein and not otherwise defined shall have the same meanings as ascribed thereto in the Board's Mortgage Loan Policy for the One to Four Family Mortgage Program, as the same shall be amended from time to time.

1.4 **Exhibits.** Attached hereto and by reference made a part of this Servicing Agreement are the following exhibits:

- Exhibit A: Loan Service Report;
- Exhibit B: Property Inspection Report;
- Exhibit C: Cash Disbursement Request;
- Exhibit D: Residential Reservation Request Form;
- Exhibit E: Residential Reservation Change Form;
- Exhibit G: Mortgage Paid in Full Form;
- Exhibit H: Reconciliation Statement of Mortgage Loans Form;
- Exhibit I: Exception Reporting Form;
- Exhibit J: Electronic Funds Transfer Form;
- Exhibit K: Mortgages Interim Remittance Form;
- Exhibit L: Mortgage Maturity Form; and
- Exhibit M: the Mortgage Loan Policy.

1.5 The **Mortgage Loan Policy** is published by the Board, the current version of which is attached hereto as Exhibit M. The Mortgage Loan Policy, as the same may be amended from time to time, is by this reference incorporated herein and made a part hereof. In the event of any conflict between this Servicing Agreement and the Mortgage Loan Policy as so amended or supplemented, the Mortgage Loan Policy shall govern. The Participant may elect, within ten (10) days after the effective date of an amendment or supplement that substantially impairs the ability of the Participant to satisfy its obligations under this Servicing Agreement and the Mortgage Loan Policy, terminate this Servicing Agreement by giving written notice of its election to terminate. Notwithstanding any such termination, this Servicing Agreement shall continue in full force and effect relative to those Mortgage Loans being serviced by the Participant at the time of termination until the effective date of a new servicing agreement between the Board and another Participant (approved by the Board) who agrees to service those Mortgage Loans being serviced hereunder.

Section 2 Participant's Duties and Responsibilities

2.1 The Participant shall service the Mortgage Loans in accordance with acceptable mortgage servicing practices of prudent lending institutions and in accordance with the terms, conditions, and requirements of this Servicing Agreement and the Mortgage Loan Policy.

2.2 The Participant in the performance of its duties hereunder is an independent contractor acting in its own behalf and for its own account. It has no authority, expressed or implied, to act in any manner or by any means for or on behalf of the Board in any capacity other than that of an independent contractor and in no respect except as expressly set forth herein and in the Mortgage Loan Policy or as it may from time to time be requested by the Board in writing.

2.3 The Participant is not authorized or empowered to waive or vary the terms of the Mortgage Loans, except as may be required by applicable law or regulation of the Federal Housing Administration (FHA) or

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

the Department of Veteran Affairs (VA) or, if applicable, the provisions of any policy of primary PMI, and will not at any time waive or consent to the postponement of strict compliance on the part of any mortgagor with any term, provisions, or covenant of the Mortgage Loans except to the extent that procedures for forbearance or indulgence may be permitted under the Mortgage Loan Policy or required by applicable law or regulation.

2.4 Notwithstanding the provisions of subsection 2.3 of this Section 2 and the provisions of any applicable FHA insurance or VA guaranty or the applicable rules or regulations relating thereto or any applicable policy of PMI, the Participant may not waive (or consent on behalf of the Board pursuant to) the provisions of any Mortgage Loan to the effect that the mortgaged premises may not be assumed without the prior written consent of the Board.

2.5 The Participant will promptly report to the Board all actions taken with respect to any Mortgage Loan, including, without limitation, any waivers or variances made pursuant to applicable FHA, VA, or PMI requirements.

2.6 The Participant will discharge promptly all obligations of the mortgagee named in the Mortgage Loans, as well as every obligation arising hereunder and under any applicable:

- a. contract of insurance with FHA;
- b. guaranty of VA;
- c. policy of PMI.

2.7 The Participant will retain in its possession all records customarily maintained with respect to payment of all such obligations and, when requested to do so, will forward to the Board for examination satisfactory evidence of such payments.

Section 3 Warranties of Participant

The Participant represents and warrants to the Board and any successors in interest, for each Mortgage Loan that the Participant sells to the Board **after the effective date of this Servicing Agreement**, that:

3.1 The Participant is duly organized, validly existing and in good standing under the laws of any jurisdiction in which it originates or services any Mortgage Loan sold to the Board and has obtained all licenses required, if any, in order to originate or service Mortgage Loans in such jurisdiction, and is otherwise authorized to do business in the State of Montana;

3.2 The Participant or its accepted Agent is named as payee under each mortgage note as mortgagee/beneficiary under each mortgage, and all closing documents are signed by the persons they purport to be;

3.3 The terms of the Mortgage Loan have not been impaired, waived, altered, or modified in any respect, except by instruments of record described by the title insurance policy accompanying the Mortgage Loan;

3.4 Immediately prior to the transfer and assignment contemplated on each Mortgage Loan funding date, the Participant, or its accepted Agent had good title to, and was the sole owner of, each Mortgage Loan so transferred and assigned on this date and assignment validly transfers such Mortgage Loan, free and clear of any pledge, lien, encumbrance or security interest;

3.5 As of the date of transfer to the Board, the Mortgage Loan is current in all payments required in accordance with its terms;

3.6 No default, breach, violation, or event of acceleration exists, and no event exists which, with notice and expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration; and the Participant has not waived any such default, breach, violation, or event of acceleration;

3.7 There is no delinquent tax or delinquent assessment lien against the property subject to any Mortgage Loan transferred to the Board;

3.8 Except to the extent that the buy-down agreement for any Mortgage Loan forgives the indebtedness of the mortgagee, there is no offset, defense, counterclaim to, or right of rescission of the Mortgage Loan, including the obligation of the borrower to pay the unpaid principal or interest on the Mortgage Loan;

3.9 There are no mechanic's lien's or claims for work, labor, or material affecting the real property subject to the Mortgage Loan at the time of its transfer to the Board which are or may be a lien prior to, or equal with, the lien of such mortgage except those that are affirmatively insured against by the title insurance policy referred to in paragraph 15 below;

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

3.10 The real property subject to the Mortgage Loan on the date of transfer of the Mortgage Loan to the Board is free of damage and is in good repair and is located within the state of Montana;

3.11 The loan application was taken and processed, and The Mortgage Loan was made in compliance with, all applicable local, state, and federal laws and regulations (including without limitation, state usury laws, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act, Homeowner's Protection Act and related disclosure laws) in all material respects, and consummation of the transactions contemplated hereby, including without limitation, the receipt of interest by the Board and their successors in interest will not involve the violation of any such laws;

3.12 The mortgage, deed of trust or trust indenture contains customary and enforceable provisions which render the rights and remedies of the holder adequate to realize the benefits of the security against the real property subject of the Mortgage Loan, including:

a. in the case of a mortgage designated as deed of trust or trust indenture, by trustee's sale; and
b. otherwise by foreclosure, and there is no homestead or other exemption available to the borrower that would interfere with such right to sell at a trustee's sale or right to foreclosure.

3.13 If the mortgage is a deed of trust or trust indenture, a trustee, duly qualified under applicable law to serve as such, is properly designated, serving and named in such mortgage;

3.14 Except in connection with a trustee's sale after default by the borrower, no fees or expenses are payable by the Participant or the Board to the trustee under any mortgage constituting a deed of trust or trust indenture;

3.15 An American Land Title Association (ALTA) Mortgage Loan Policy, Extended Coverage or other federally acceptable form of title insurance policy acceptable to Fannie Mae (FNMA) or Federal Home Loan Mortgage Association (FHLMA), issued by a title insurer acceptable to FNMA or FHLMA and qualified to do business in the State of Montana, was effective at the origination of the Mortgage Loan, is valid and remains in full force and effect, insuring the appropriate priority of the lien of the mortgage in the original principal amount or highest obtainable balance of the Mortgage Loan.

3.16 The Mortgage Loan meets the terms and criteria set forth in the Board's Mortgage Loan Policy and Letter of Commitment;

3.17 As demonstrated by a survey (or plat drawing acceptable to the title insurance company) of the real property securing the mortgage loan, all improvements subject to the mortgage are wholly within the boundaries and the building restriction laws of the real property subject of the Mortgage Loan, or the mortgagee's title insurance policy insuring the mortgage affirmatively insures against loss or damage by reason of any violation, variation, encroachment, or adverse circumstance that either is disclosed or would have been disclosed by an accurate survey;

3.18 The building or buildings upon the real property subject of the Mortgage Loan are insured against loss by fire, hazards of extended coverage and other hazards as is customary in the area where such property is located, including flood insurance, if available and required under the National Flood Insurance Act of 1968, as amended;

3.19 A Mortgage Loan secured by a unit in a condominium or Planned Unit Development (PUD) complies with the applicable condominium or PUD warranties set forth in the FHLMC Manual;

3.20 With respect to any lien held by a homeowners association, special district, or similar organization, for assessments, maintenance fees or similar charges against the real property subject of a Mortgage Loan which lien is, or appears to be, prior to such Mortgage Loan:

a. the homeowners association, special district or similar organization will give at least 60 days written notice to the participant before foreclosing on such lien; and the Participant will forward such notice to the Board at least 45 days before foreclosure; and

b. in the event of foreclosure of such a lien, the Participant will reimburse the Board in the amount by which the total amount of such lien exceeds the total of six months unpaid assessments.

3.21 All impediments to title have been waived expressly or by regulation of the appropriate agency and do not adversely affect the value, use, enjoyment or marketability of the property.

3.22 If the borrower's marital status is not indicated or the borrower's spouse did not execute the mortgage, the mortgage is still a valid lien. The Participant further agrees to repurchase the mortgage loan if this warranty is breached, or if the borrower's spouse challenges the validity of the mortgage lien because it was not executed by both spouses;

3.23 A FHA mortgage loan is fully insured, and a VA mortgage loan is guaranteed to the extent required in the Mortgage Loan Policy and Letter of Commitment, by the appropriate agency. If the Board incurs any loss because of a failure of the Participant to have made the FHA insurance payments as

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

represented on the Funding Transmittal, then upon receiving notice of the loss from the Board, the Participant will promptly and completely reimburse the Board for the amount of the loss;

3.24 If the Mortgage Loan is a FHA and VA mortgage loan, it has been underwritten in strict conformity with all regulations and requirements of the applicable agency;

3.25 There is no assumption, loss draft, or payoff pending;

3.26. The appraisal provided to the Board to support the loan is completed by a competent appraiser, with adequate background and experience and that no conflict of interest exists as to the appraised property;

3.27. If the water to the real property is supplied from an individual water system, the water is potable and suitable for drinking and the water system meets state and local requirements;

3.28. If the water to the real property is supplied from a community water system, the system is approved by the state department of environmental quality;

3.29. If the real property subject to the mortgage is served by an individual sewage system, the system meets state and local requirements;

3.30 This Servicing Agreement does not conflict with or result in a breach of any of the terms, conditions or provisions of the charter or by-laws 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 charter or other corporate restriction or 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 its obligations under this Servicing Agreement, and this Servicing Agreement constitutes a valid and binding obligation of the Participant enforceable against it in accordance with the Servicing Agreement's terms, subject to any applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally.

3.31 A Reconciliation Statement of Mortgage Loans, provided for in Section 8.1 of this Servicing Agreement, that is transmitted to the Board by facsimile is a true and accurate copy of the original and the Board may rely on such facsimile copy or some other electronic means acceptable to the Board as though it were an original.

Making these warranties will not release the Participant from the responsibility to comply with all warranties found throughout the Mortgage Loan Policy. It is understood and agreed that the representations and warranties set forth in the Mortgage Loan Policy shall survive delivery of the respective mortgage loans.

Section 4 Collections from Mortgagors

4.1 Continuously from the date hereof until the principal and interest of Mortgage Loan is paid in full, or until this Servicing Agreement is terminated as hereinafter provided, the Participant will proceed diligently to collect all payments due under the Mortgage Loan (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 each Mortgage Loan 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) and HOPA (Homeowner's Protection Act).

4.2 The Participant shall collect reserve or escrow payments (Escrow Payments) in accordance with the Mortgage Loan Policy. The Participant shall at least annually review the estimated taxes, assessments, and insurance premiums that will become due and payable, determine the adequacy of the monthly Escrow Payments to be made by the mortgagor or of other arrangements to pay such charges when they become due and payable and make such adjustments in the amount of future Escrow Payments or in such other arrangements as are necessary and appropriate to assure that sufficient funds are available to pay such charges when they become due and payable.

4.3 Upon the payment or prepayment in full of a Mortgage Loan, the Participant is hereby authorized and requested on behalf of the Board to prepare and forward to the Board all documents necessary to discharge any Mortgage Loan as mandated in state law. Upon receipt of all principal, interest, and other

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

payments called for in the mortgage documents and the discharge of such Mortgage Loan, the Participant shall be responsible to account for and pay over to the Board all such payments as referenced in Section 8.

4.4 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.

In the event that principal, interest, or any maintenance charge with respect to any Mortgage Loan is not paid within sixty (60) days after they become due and payable, the Participant on such sixtieth (60th) day, and monthly thereafter until the default is cured, shall send to the Board a statement listing the account number, 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 a borrower fails to perform any other covenant or obligation under a 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 number and stating 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.

4.5 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, as it may be amended from time to time, or the Servicemen's Readjustment Act, as it may be amended from time to time, 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 Federal Housing Commissioner or to the Administrator of Veterans Affairs, the Participant shall attend to the settlement with the Federal Housing Commissioner or the Administrator of Veterans Affairs as part of its services under this Servicing Agreement.

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, from the Federal Housing Commissioner or the Administrator of Veterans Affairs, pursuant to the respective provisions of the National Housing Act or the Servicemen's Readjustment Act, as amended, and the rules and regulations issued thereunder, and the Participant, when so requested by the Board, shall attend to the settlement with the Federal Housing Commissioner or the Administrator of Veterans Affairs as part of its services under this Servicing Agreement.

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.

4.6 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, in such manner and to such extent as are customarily embraced in the proper management of property in the locality involved. Such service shall include, but not be limited to, the rental of the premises if permissible under the applicable laws and if requested by the Board, the collection of rents, attending to insurance on the premises in the manner provided in Section 9 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 8 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 Servicing Agreement, 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 management and protection costs and expenses incurred under this section, including reasonable attorney's fees as approved by the Board.

Section 5 Compensation of Participant

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

5.1 As compensation for servicing the Mortgage Loans, the Participant shall receive a monthly servicing fee (the Servicing Fee) equal to such percentage of the outstanding principal balance of the Mortgage Loans as shall be specified in the Commitment Letter provided, however, that Participant shall deduct the servicing fee only when the entire amount of the borrower's monthly payment due with respect to any Mortgage Loan has in fact been paid by the respective borrower. Such fee shall be payable monthly and shall be based upon the outstanding principal balance of the Mortgage Loans serviced by the Participant at the beginning of each month. In addition, the Participant shall be entitled to retain late charges collected from the borrowers (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 provided in the Mortgage Loan Policy, from rentals collected by said Participant, a fee equal to five percent (5%) of the amount of such rentals collected.

5.2 Notwithstanding any other provision contained in this Servicing Agreement or the Letter of Commitment between the Participant and the Board, the Participant shall not charge or collect any fees or compensation of any kind from the Board or any other party for its services under this Servicing Agreement, except as expressly provided in Sections 4 and 5 and the Mortgage Loan Policy.

Section 6 Compliance with FHA, VA, and Private Mortgage Insurance Requirements

6.1 Participant represents that it is an approved FHA and/or VA Mortgagee as defined in the National Housing Act, as amended, and the Servicemen's Readjustment Act, as amended and rules and regulations thereunder. 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 participant, 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 Servicing Agreement 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.

6.2 The Participant shall comply, where applicable, with the National Housing Act and Servicemen's Readjustment Act, as amended, and the Homeowner's Protection Act, 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), and with all applicable requirements of any PMI policy including the giving of all notices and submitting of all claims required to be given or submitted to FHA, VA, or private mortgage insurer, to the end that the full benefit of each contract of insurance or guaranty will insure to the benefit of the Board.

6.3 If and to the extent necessary to assure that any applicable PMI policy shall extend to and cover a default arising out of or in connection with the failure of the Borrower to make any payment of principal and/or interest due under the Mortgage Loan, which payment arises because the Board exercises or directs the exercise of its right to call the Mortgage Loan, or the Board exercises or directs the exercise of a "due-on-sale" provision in the note and mortgage, trust indenture or deed of trust for the Mortgage Loan, the Participant agrees to offer or cause to be offered to, the Borrower or the transferee, as the case may be, a new mortgage loan at a market interest rate in an amount not less than the then outstanding principal balance with no decrease in the amortization period.

6.4 If the FHA insurance or VA guaranty concerning any Mortgage Loan, or private mortgage insurance 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.

6.5 The Participant shall keep in force during the term of this Servicing Agreement or any extension thereof, a policy or policies of insurance covering errors and omissions in the handling of the insurance coverage required under this section, which policy or policies shall be in such form and amount as shall be satisfactory to the Board.

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

Section 7 Inspections

7.1 The Participant shall make an exterior inspection of the real property subject to each Mortgage Loan at least once every five (5) years, if requested by the Board, and shall make exterior and interior inspections of the real property subject to each Mortgage Loan that is in default for more than ninety (90) days or if deemed to be warranted by the Participant. Within 30 days of the inspection, the Participant shall furnish the Board with a written report describing the real property inspected; the real property which in its opinion is not in satisfactory condition and, in such case, its recommendation as to the future action to be taken in respect thereto. The Participant shall make such reasonable additional inspections as the Board may from time to time request and furnish the Board with a written report covering such inspections within thirty (30) days after the date thereof in the form and containing the information required by the Board.

Section 8 Remittances, Reporting and Handling of Funds

8.1 **Remittance and Reporting** - The Participant may transmit by Electronic Funds Transfer (EFT) all funds applicable to the **monthly** payment of principal and interest on the Mortgage Loans serviced by the Participant, by five (5) business days from the 20th of each month. Remittances shall be reported and submitted to the Board on the **Reconciliation Statement of Mortgage Loans and Exception Reporting Forms**, which are prepared by the Participant, are based on an Exception Reporting system of accounting and detail all mortgage loan activity for the reporting period from the twenty-first day of the previous month to the twentieth day of the current month. The Participant may transmit the Reconciliation Statement to the Board by facsimile or some other electronic means acceptable to the Board, subject to the warranty in Section 3.31 of this Servicing Agreement.

Effective July 1, 2004, Participants servicing more than 200 mortgage loans will be required to submit the **Exception Reporting Form** electronically to the Board. This form must electronically interface with the Board's internal accounting system.

The Participant shall transmit by EFT and report all funds for each **Mortgage Loan Paid In Full** by three (3) business days from the Payoff Date.

Any amount received by the Participant and not remitted by the Participant by the applicable due date will be subject to a **Late Fee** (calculated at New York Prime on the applicable due date plus 5%) from the remittance due date to the remittance receipt date. The late fee shall be calculated on the remittance amount and billed by the Board.

8.2 **Handling** - Until such funds are paid to the Board, the Participant shall segregate and hold such funds for the Board in a special trust or custodial account. The Participant shall also segregate and hold for the Board, in the same or in a similar special trust or custodial deposit account, all other funds received from a borrower until applied in accordance with the terms of the Mortgage Loan and, where applicable, the regulations of or contract of insurance with the Federal Housing Administration or the regulations or guaranty of the Administrator of Veterans Affairs. Such trust account shall be:

- a. maintained in a financial institution approved by the Board;
- b. specifically designated so as to disclose its custodial nature;
- 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 borrower whose monies are included therein;
- d. in compliance with all applicable rules of the FDIC or the NCUA as the case may be and, if applicable, those of the FHA or VA; and
- e. clearly identify the respective interests of the Board and of each individual borrower.

8.3 **Funds Held by Participant** - Funds may be held and managed within the Participant's own banking facilities provided:

- a. the funds are held and managed in accordance with regulations established by the applicable supervising government agency with respect to such funds;
- b. proper books and records are maintained reflecting the interest of the Board and each individual borrower; and
- c. such funds are fully insured as stated above by FDIC, or NCUA.

The Participant shall furnish the Board with a copy of the statement of each such account upon the Board's request.

8.4 **Transfer of funds** - If at any time prior to the 20th of any month funds held by the Participant in a special trust or custodial deposit account under subsections 8.2 or 8.3 exceeds the FDIC insurance limit of

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

\$100,000, the Participant shall, by Electronic Funds Transfer (EFT), immediately transfer all funds in the special trust or custodial deposit account to the Board.

8.5 **Assignment** - Upon any subsequent assignment by the Board of a Mortgage Loan, the Board shall mail 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 each Mortgage Loan, and the Participant shall continue to make payments of principal and interest to the Board. The Board shall indemnify the Participant from any liability for any payments of principal and interest made prior to receipt by the Participant of the written notice.

8.6 **Maintenance Charges** - 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 from the borrowers; and

b. such maintenance charges 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 borrowers so as to avoid defaults adversely affecting the rights of the Board. The term "maintenance charges" as used in this section means taxes, insurance, premiums and all payments, other than principal and interest, for whatever purpose required by the terms of the Mortgage Loan or by local or state law or regulations of the Federal Housing Commissioner or Administrator of Veterans Affairs or under the terms of a PMI policy, to be made by the borrower to the lender or to others.

Section 9 Insurance

The Participant shall in general do all things reasonably necessary to protect the interest of the Board as Mortgagee.

9.1 As to each Mortgage Loan assigned to the Board hereunder, the Participant shall, within ten (10) days of the date of assignment to the Board, notify by mail:

a. the insurance company issuing the policy insuring the real property subject of the Mortgage Loan against loss or damage by fire or other hazard;

b. the Federal Housing Commissioner, Administrator of Veterans Affairs, or private mortgage insurer providing coverage or benefits; and

c. the insurance company issuing life, health, accident or similar insurance on the borrower which pertains to or was originated as the result of the Mortgage Loan, that such Mortgage Loan was assigned to the Board, the date of such assignment and that the Board is to be named the loss payee under a standard mortgagee clause with respect to such insurance.

9.2 The Participant shall assure that at all times during the term of each Mortgage Loan that all of the buildings and improvements on the mortgaged premises are 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. The insurance on buildings and improvements on the mortgaged premises shall be written by a company licensed to do business in the State of Montana and shall be in amounts specifically designated by the Board 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 up to the full amount of such insurance and shall otherwise be sufficient to prevent the borrower from being a co-insurer.

9.3 The Participant shall promptly notify the Board of any loss or damage by fire, or from any other cause, to the real property subject of a Mortgage Loan in excess of five thousand dollars (\$5,000), 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 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 five thousand dollars (\$5,000).

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

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

9.5 In the event of default and foreclosure, upon the transfer of the title to the real property subject of the Mortgage Loan to the Board, the Participant shall cancel the hazard insurance policy and remit to the Board or deposit to its account any refund of premium paid.

Section 10 Fidelity Bond and Error and Omissions Insurance

10.1 Other than is provided for in Section 6.5 of this Servicing Agreement, the Participant is not required to maintain an errors and omissions insurance policy or fidelity bonding or insurance coverage, but, if the Participant does maintain such insurance or bond, it is requested to submit evidence thereof to the Board. Further, if the Participant does maintain such errors and omissions insurance or a fidelity bond or insurance and such insurance or bond, or bond required in Section 6.5 is canceled by the insurance or bonding company, the Participant will notify the Board within 10 days of receipt by the Participant of the notice of cancellation.

Section 11 Records

11.1 The Participant shall keep satisfactory books and records, including but not limited to all original loan documents pertaining to each Mortgage Loan, which shall reflect the interest of the Board therein and shall make reports relating to a Mortgage Loan 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 any Mortgage Loan. The Participant shall supply the Board with photo static or other copies of such of these records, as the Board may request. Such records may not be destroyed or otherwise disposed of without the prior written consent of the Board.

Section 12 Notification by Participant

12.1 The Participant shall, in addition to the other notifications called for herein, promptly notify the Board in writing of any of the following which come to the attention of the Participant:

- a. abandonment, rental or sale of the real property subject of a Mortgage Loan;
- b. any lack of repair or any other deterioration or waste suffered, threatened or committed in respect of real property subject of a Mortgage Loan;
- c. payment of any loan payment or Escrow Payment by any person other than the original borrower; and
- d. any other matter which might adversely affect or result in diminution of the value of the Board's security in the real property subject of a Mortgage Loan.

Section 13 Repurchase of Mortgage Loans

13.1 The Participant shall repurchase any Mortgage Loan serviced hereunder for an amount equal to:

- a. one hundred percent (100%) of the unpaid principal balance of the Mortgage Loan plus accrued interest;
- b. the aggregate amount of any unreimbursed advances made by or on behalf of the Board (other than by the Participant) for the account of the borrower and interest thereon at the then current Interest Rate; and
- c. any unreimbursed attorney's fees, legal expenses, court costs, or other costs or expenses incurred or expended by or on behalf of the Board in connection with such Mortgage Loan and interest thereon at the then Current Interest Rate, upon notice by the Board, if in the reasonable judgment of the Board (which judgment shall be final and conclusive for all purposes between the parties) any of the following shall occur:
 - i. any mortgage insurance or guaranty with respect to such Mortgage Loan shall lapse or be voided, reduced, released or adversely affected in any way at any time during the term of the Mortgage Loan due to the Participant's error, act or omission with respect to the servicing of the Mortgage Loan;
 - ii. the Board suffers, or is threatened with, a material loss or detriment by reason of the misfeasance, nonfeasance or malfeasance of the Participant with respect to the servicing of the Mortgage Loan;
 - iii. the Participant, without prior written consent of the Board waives (or consents on behalf of the Board to waive) the provisions of the Mortgage Loan that the real property subject of the Mortgage Loan may not be sold by the borrower or that the Mortgage Loan may not be assumed without the prior written consent of the Board; or

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

iv. there is a violation of the Mortgage Loan Policy.

13.2 Any repurchase by the Participant pursuant to subsection 13.1 of this Section 13 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 ten (10) days from the date of such notice. Upon repurchase, the Board shall reassign its interest in all appropriate Mortgage Loan documents, including, without limitation, any insurance thereon or with respect thereto to the Participant and shall hold the Participant harmless from any loss resulting from any action taken by the Board which has impaired the mortgage lien.

Section 14 Termination

14.1. Notwithstanding any provision herein to the contrary, this Servicing Agreement may be terminated by the Board upon the mailing of written notice of termination to the Participant upon any one or more of the following events:

a. the Participant fails, in the sole judgment of the Board, to perform any of its duties or responsibilities hereunder, under the Mortgage Loan Policy or under any other agreement with, or undertaking to, the Board, or any policy of errors and omissions insurance or fidelity bond maintained by the Participant under Section 10.1 or required by Section 6.5 of this Servicing Agreement is canceled;

b. any private or governmental agency, body, or department which shall have insured or guaranteed any of the Mortgage Loans, including particularly FHA and VA, 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;

c. any change shall occur in the Participant's organization which the Board in its sole judgment deems material, including resignation of management personnel, mergers or consolidations, changes of name or corporate charter, or if the Participant is a corporation or a wholly owned subsidiary of another corporation with fewer than one hundred (100) stockholders, a change shall occur in the ownership of one-third or more of the stock of the Participant or such parent corporation;

d. upon the appointment of a receiver or liquidator of or for the Participant, or for any of the property of the Participant, whether voluntary or involuntary; or upon the making by any person, firm or corporation of an application for any such appointment; or upon a total or, in the sole judgment of the Board, a substantial suspension or discontinuance of business of the Participant; or upon the making of any assignment for the benefit of the creditors, or composition with creditors; or upon the adjudication of the Participant as insolvent; or upon the filing of any petition in bankruptcy or petition pursuant to the provisions of any chapter of the Bankruptcy Act of the United States as amended, by or against the Participant; or upon any part of the business or property of the Participant being taken possession of or closed by any governmental agency or body with or without warrant by law; or upon the Participant becoming the subject of liquidation or dissolution proceedings or any proceedings permitting the filing of claims by creditors; or upon the issuance of any warrant of attachment or an attachment or other process against any of the credits or property of the Participant; or upon the entry of judgment in an amount which the Board in its sole judgment deems substantial against the Participant, either separately or jointly with any other party; or upon the commencement of any creditors' proceedings under the statutes of any state; or upon the insolvency or an act of insolvency or bankruptcy of the Participant; or if in the sole judgment of the Board the Participant becomes incapacitated by operation of law or fact from performing its duties pursuant to the terms of this Servicing Agreement; or

e. any fees due the Board by the Participant remain unpaid for more than thirty (30) calendar days.

14.2 The Participant agrees that if any of the events specified in clauses (a), (b), (c), (d), or (e) of subsection 14.1 of this Section shall occur, it will give notice thereof to the Board within two (2) days after the occurrence of such event.

14.3 In addition to termination pursuant to Section 14.1 hereof, this Servicing Agreement may be terminated as to future Board purchases of Mortgage Loans by either party at any time upon giving thirty (30) days written notice of termination to the other party. Termination under this section shall not in any respect change or modify the obligation of the Participant with respect to the servicing of a Mortgage Loan purchased by the Board prior to termination, and the Participant shall continue to be responsible for the servicing of the Mortgage Loan unless the Board requires the Participant to repurchase the Mortgage Loan as provided in Section 13.

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

14.4 The Board may suspend approval of a Participant and discontinue purchasing loans from the Participant or terminate the servicing of Mortgage Loans by the Participant if the Board determines that more than seven (7%) percent of loan payments have been delinquent for more than ninety (90) calendar days.

14.5 In any event and without cause, upon thirty (30) days written notice, this Servicing Agreement may be terminated by the Board and the Board shall determine a rate to pay the Participant on the outstanding balance on Mortgage Loans held for the Board by the Participant.

14.6 From and after the effective date of termination of this Servicing Agreement pursuant to any provision hereof, the Participant shall be relieved of further responsibility to service the Mortgage Loans. The Participant forthwith upon such termination shall:

a. pay over to the Board or its designee all monies collected and held by it pursuant to this Servicing Agreement and/or pursuant to any agreement, letter or arrangement relating to any Mortgage Loan serviced by the Participant;

b. deliver to the Board or its designee all loan documents, insurance policies, and records in connection with any Mortgage Loan serviced by the Participant; and

c. deliver to the Board a full accounting including a statement showing the monthly payments collected by it and a statement of monies held in trust by it for the payment of maintenance or other charges in respect to each Mortgage Loan serviced by the Participant.

Section 15 Term of Servicing Agreement

15.1 Unless sooner terminated as herein provided or by mutual agreement, this Servicing Agreement shall continue from the date hereof during the term of each Mortgage Loan serviced by the Participant, and until the principal and interest of each Mortgage Loan are paid in full, or until proceedings to foreclose any Mortgage Loan in foreclosure are completed or title to the real property subject of the Mortgage Loan is acquired by the Board in lieu of foreclosure or the Mortgage Loan is assigned to FHA, VA or private mortgage insurer under contracts of insurance or guaranty.

Section 16 Indemnification

16.1 If at any time any action or other legal proceedings should be instituted against the Board by reason of or in connection with any alleged 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 the Mortgage Loans or otherwise), the Participant shall indemnify and save the Board harmless of and from any and all liability, 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 attorney's fees and other disbursements paid or incurred in connection therewith.

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

Section 17 Annual Report of Participant’s Financial Condition

17.1 Annually, and within ninety (90) days after the Participant’s year-end, a Participant who is a commercial bank, must submit to the Board a complete copy of the consolidated report of condition and income. Other Participants must submit audited financial statements, including both a balance sheet and income statement.

Section 18 Assignment and Delegation

18.1 This Servicing Agreement shall not be assigned by the Participant or its successors or assigns, nor shall the performance of the obligations of the Participant hereunder be delegated to any other person, without the prior written consent of the Board, which consent shall not be unreasonably withheld.

Section 19 Authority of Participant

19.1 The Participant has, and its officers acting on its behalf have, full legal authority to engage in the transactions and perform the services covered by this Servicing Agreement; execute and deliver this Servicing Agreement, consummate the transactions herein contemplated, whether presently or in the future, and comply with the terms, conditions and provisions hereof.

Section 20 Other Provisions

20.1 The Participant shall, at its expense, execute all documents and take all steps requested by the Board from time to time to perform the covenants and agreements herein.

20.2 The provisions of this Servicing Agreement cannot be waived or modified except in writing signed by the parties hereto. Inaction or failure to demand strict performance shall not be deemed a waiver.

20.3 In the event the Participant is the recipient of any funds, from whatever source, intended to reduce or pay the Mortgage Loan or assist in the payment of the monthly payments with respect thereto, the Participant agrees promptly to apply all such funds for the purpose intended.

20.4 This Servicing Agreement shall be interpreted and construed in accordance with the laws of the State of Montana and venue shall be in the First Judicial District in Lewis and Clark County.

20.5 All notices which may be required herein shall be in writing and shall be considered to have been given as of the date and time when the same is deposited in a United States Post Office with postage prepaid and mailed by registered or certified United States Mail, return receipt requested, to the Participant at the following address:

Board: Montana Board of Investments
2401 Colonial Drive, 3rd Floor
P.O. Box 200126
Helena, MT 59620-0126

Participant: _____

20.6 This Servicing Agreement may be executed in any number of counterparts, all of which taken together will constitute one and the same instrument and either party hereto may execute this Servicing Agreement by signing one or more counterparts.

20.7 Headings and titles herein are for convenience only and shall not influence the construction or interpretation of this Servicing Agreement.

20.8 It is agreed that the Participant shall be responsible for all damages, attorney’s 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 Servicing Agreement.

20.9 If any term, covenant, condition or provision of this Servicing Agreement, or the application thereof to any circumstance, shall, at any time or to any extent, be determined by the court of competent jurisdiction to be invalid or unenforceable, the remainder of this Servicing Agreement, or the application thereof to circumstances other than those as to which it is held invalid or unenforceable, shall not be

MONTANA BOARD OF INVESTMENTS RESIDENTIAL LOAN SERVICE AGREEMENT

affected thereby and each term, covenant, condition and provision of this Servicing Agreement shall be valid and enforceable to the fullest extent permitted by law.

20.10 The provisions of Section 16 hereof shall survive the termination of this Servicing Agreement.

20.11 All of the covenants and agreements herein contained shall extend to and be obligatory upon all successors of the respective parties.

IN WITNESS WHEREOF, each party has caused this Servicing Agreement to be signed and executed and its corporate seal hereto affixed in its name by its proper officers thereunto duly authorized on the date and year first written above.

BOARD OF INVESTMENTS

By _____

Its _____

PARTICIPANT

By _____

Its _____

Attest:

Its: _____

(CORPORATE SEAL)