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# Participation Agreement

**Mortgage Banking**

**1/3/2022**

# Participation Agreement

## Recitals and Signatures



2479 S. Lake Park Blvd. West Valley City, UT 84120  
**P**801.902.8200 **F** 801.902.8327 [www.utahhousingcorp.org](http://www.utahhousingcorp.org)

Mortgage Banking

**All Reference to Conventional and the NoMI Loan program have been temporarily eliminated from the Participation Documents.**

**Announcement: April 30, 2020 [Suspension of the NoMI Program](#)**

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### NoMI

Due to current market conditions and increased risk to Utah Housing associated with NoMI loans, Utah Housing is suspending its conventional NoMI Loan program effective for all Mortgage Purchase Agreements (MPA) requested on or after June 1, 2020. MPAs issued on or after May 1, 2020 will not be eligible for a 30 day interest rate extension.

Although the NoMI Loan program is suspended indefinitely, we hope to be able to reintroduce it or something similar in the future.

Utah Housing values its ongoing partnership with each of its Participating Lenders. If you have any questions regarding this announcement, please contact Deon Spilker, Vice Present of Mortgage Banking, via e-mail at [dspilker@uthc.org](mailto:dspilker@uthc.org)



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**Section 1 Recitals and Signatures**

**UTAH HOUSING CORPORATION  
SINGLE FAMILY MORTGAGE PROGRAM  
PARTICIPATION AGREEMENT  
RECITALS AND SIGNATURES**

THIS PARTICIPATION AGREEMENT (“AGREEMENT”) is made and entered into as of \_\_\_\_\_, \_\_\_\_\_, between Utah Housing Corporation and \_\_\_\_\_ (as “the Lender”).

WHEREAS, Utah Housing has created its Single Family Mortgage Loan Program (the “Program”) for the purpose of purchasing qualifying loans made by participating lenders to low and moderate income homebuyers to finance the purchase of single family homes (as defined below, “Mortgage Loans”);

WHEREAS, the Lender desires to originate and sell Mortgage Loans to Utah Housing;

WHEREAS, Utah Housing is willing to purchase Mortgage Loans from the Lender, pursuant to the provisions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Utah Housing and the Lender hereby enter into this Agreement and agree to fully cooperate with one another to implement, fulfill and monitor the Selling Obligations described herein.

Utah Housing Corporation

Lender: \_\_\_\_\_

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

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

(Signature)

\_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_

Its: \_\_\_\_\_

# Participation Agreement

## Recitals and Signatures



Address: 2479 South Lake Park Blvd  
West Valley City, UT 84120

Address: \_\_\_\_\_  
\_\_\_\_\_  
City, State, Zip

Fannie Mae Seller ID \_\_\_\_\_ OR Fannie Mae Seller/Service ID \_\_\_\_\_

Freddie Mac Seller ID \_\_\_\_\_ OR Freddie Mac Seller/Service \_\_\_\_\_

FHA Mortgagee ID \_\_\_\_\_

\*Official E-mail address to be used by Utah Housing to communicate Participation Document amendments and updates, future program modifications, daily rate notices, and other communication:

Designated Lender Contact: \_\_\_\_\_ Phone # \_\_\_\_\_

Lender Designated Contact E-mail: \_\_\_\_\_

## Section 2 Content of Contract, Notices, Amendments, Interpretation and Definitions

### 2.1 Contractual Basis of Relationship between Utah Housing and Lender

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Utah Housing agrees to purchase Mortgage Loans from the Lender pursuant to the following agreements (the "Participation Documents"), which collectively form the contractual basis for such transactions:

1. This Participation Agreement;
2. Mortgage Purchase Agreement;
3. Selling Supplement; and
4. All other documents incorporated into this Agreement.

### 2.2 Phrases

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All phrases that refer to a Participation Document (any of the above referenced documents), such as but not limited to "herein", "hereunder", this "Agreement", and so forth are made for the purpose of brevity and sometimes for specific or general reference purposes, but such references in all cases incorporate each Participation Document.

### 2.3 Amendments

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Amendments and additions to the Participation Documents may be made from time to time by Utah Housing, and notification of such changes shall be distributed to the Lender Designated Contact Email listed in Section 1 above. Such amendments and additions shall be effective immediately as to all future purchases of Mortgage Loans pursuant thereto. If the Lender does not agree with any such amendment or addition, the Lender may give notice thereof to Utah Housing, and (1) all purchases of Mortgage Loans the rates for which have been locked shall be completed in accordance with the then existing Participation Documents, (2) no new transactions shall be undertaken and (3) this Agreement may be terminated by Utah Housing upon notice thereof to the Lender. Exhibit A to this Agreement are the current Income Limits, Acquisition Cost Limits, loan purchase prices, and the fees that must be used for Mortgage Loans originated for sale to Utah Housing. The latest interest rate information will be shown on the Utah Housing website.

# Participation Agreement

*Content of Contract, Notices, Amendments,  
Interpretation and Definitions*



## 2.4 Printed Copies

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If the Lender maintains printed copies of the Participation Documents, it shall keep the documents current by inserting all replacement pages. The Lender shall, at all times, ensure that each of its employees or agents acting on its behalf with respect to Mortgage Loans has access to the most current edition of the Participation Documents as amended. This Agreement is deemed an amendment to editions of the Supplements and instructions dated before the date of this Agreement and supersedes all such editions. The most current edition of the Participation Documents will continue to be available on Utah Housing's website.

## 2.5 Notices

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Any Program changes issued by Utah Housing may be delivered electronically to the e-mail address furnished by the Lender on the "Recitals and Signatures" page of this Agreement. Other notices or communications to be given under the Participation Documents shall be given either by e-mail, delivering the same in writing by hand, by mailing first class with the United States Postal Service, or by facsimile transmission promptly confirmed by mailing first class with the United States Postal Service, addressed to Utah Housing as shown in this section or to the Lender as specified on the "Recitals and Signatures" page of this Agreement. The Lender agrees any changes to the Lender Designated Contact Email or to the Lender's street address or fax number must be submitted in writing to Utah Housing's VP of Mortgage Banking. The Lender may not send Nonpublic Personal Information to Utah Housing via e-mail unless it is encrypted using a system acceptable to Utah Housing.

If to Utah Housing:

Vice President of Mortgage Banking  
Utah Housing Corporation  
2479 S. Lake Park Blvd.  
West Valley City, UT 84120

Fax: (801) 902-8327

Email: [dspilker@uthc.org](mailto:dspilker@uthc.org)



# Participation Agreement

*Content of Contract, Notices, Amendments,  
Interpretation and Definitions*



## 2.6 Interpretation

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The staff of Utah Housing is available for guidance; however, any interpretation or waiver of any provision of this Agreement shall not be binding upon Utah Housing unless such interpretation or waiver was made or granted in writing and signed by the President or a Senior Vice President of Utah Housing.

## 2.7 Definitions

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As used in this Agreement, unless a capitalized term is defined herein or has its meaning set forth in the Utah Housing Selling Supplement, its meaning will be that indicated by the context.

### Section 3 Representations, Warranties and Covenants

#### 3.1 Mortgage Lender Application

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The Lender hereby represents and warrants that all documents, materials and other information that the Lender submitted in connection with its application to be approved as a Lender were true, accurate and complete and did not omit any material fact with respect to the information provided therein.

#### 3.2 Lender Qualifications

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The Lender represents, warrants and covenants that it is and, during the time that it originates Mortgage Loans for sale to Utah Housing, it shall remain, a the Lender that, at all times, possesses the following characteristics and meets the following requirements:

1. Be a commercial bank, trust company, savings and loan association, mortgage bank, credit union or other similar financial institution having as one of its principal purposes the making of mortgage loans in its usual and regular course of business, and otherwise qualifies as a Lender as defined in the Participation Documents;
2. Be authorized to transact mortgage lending business in Utah;
3. Maintain one or more mortgage loan origination offices in Utah, which is fully staffed with experienced personnel who make purchase money mortgage loans for owner-occupied single-family residences located in Utah;
4. Be authorized at all times during the term of the Agreement by Federal and State law and regulations to make and sell the Mortgage Loans that it has agreed to sell to Utah Housing;
5. Be an FHA-approved mortgagee, Fannie Mae and/or Freddie Mac–approved seller and employ at least one Fannie Mae and/or Freddie Mac Underwriter and “FHA Direct Endorsement Underwriter;”
6. If the Lender sells any conventional, uninsured Mortgage Loan to Utah Housing under the Participation Documents, the Lender will be at the time of the origination of any conventional Mortgage Loan, and at all times thereafter, an approved seller to Fannie Mae or Freddie Mac;
7. Eligible to participate in Federal Housing Administration (FHA), Ginnie Mae, Fannie Mae or Freddie Mac Programs;
8. As shown in its most recent quarterly financial statement (or if its financial condition is reflected on a consolidated basis with that of a parent company or companies, then as reflected in its parent company’s most recent quarterly consolidated financial statement), be in compliance

with any capital requirement imposed by a State or Federal regulatory authority with supervisory authority over it or its parent company or companies;

9. Have and maintain an adequate and reliable warehouse line of credit or other mortgage loan funding source in an amount sufficient to enable the Lender to disburse Mortgage Loan proceeds at the time of Closing for all Mortgage Loans for which it obtains a Mortgage Purchase Agreement from Utah Housing;
10. Have during a recent twelve-month period, which period shall be designated by Utah Housing, made and sold to an institutional mortgage investor (which may include Utah Housing) not less than 25 purchase money mortgage loans for owner-occupied single-family residences located in Utah;
11. Have sold to Utah Housing not less than six First Mortgage Loans in any consecutive six-month period; and
12. Have performed a post-Closing review of those items required in the Lender's approved Fannie Mae, Freddie Mac and/or FHA quality control plan for not less than 5% of the Mortgage Loans delivered for sale to Utah Housing each calendar year; provided, however, newly-qualified Lenders shall perform a post-Closing review of the first two Mortgage Loans delivered for sale to Utah Housing. (See also Part II of the Selling Supplement regarding the additional review required for third party originations.)

### 3.3 Other Covenants

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The Lender agrees as follows:

1. The Lender and its officers and employees acting on its behalf have full legal authority to engage in the transactions covered by the Participation Documents, and that such participation does not violate the charter or by-laws of the Lender or any agreement, rules, or regulations to which it is subject; that agreements, assignments and other documents executed on behalf of the Lender are binding obligations of the Lender; and the Lender shall not be a party to or be bound by any agreement, instrument or other restriction, law or regulation which now or in the future may adversely affect the ability of the Lender to perform its obligations under the Participation Documents.
2. The Lender is responsible for maintaining the confidentiality of the non-public personal information (NPI) of Applicants and Borrowers accessed by the Lender or its employees through the Utah Housing website or any other Utah Housing approved systems. Authorized use of the Lender's passwords and login information are the responsibility of the Lender. The Lender covenants that it will only provide access to authorized employees trained to protect NPI and

# Participation Agreement

## Representations, Warranties and Covenants



will insure that its employees will only use NPI accessed through the Utah Housing website for authorized purposes. The Lender agrees to cooperate with Utah Housing to terminate access to Utah Housing's website of the Lender's former employees or those employees whose access privileges are revoked. Utah Housing reserves the right to suspend, revoke or terminate access of the Lender's current or former employees for unauthorized or improper use of the Utah Housing website.

3. The Lender shall indemnify, defend, and hold harmless Utah Housing for any liability or expense arising from use, misuse, failure of the Lender to terminate access privileges or unauthorized access by the Lender's employees.
4. The Lender shall immediately notify Utah Housing of any unauthorized use of Utah Housing's website or any other breach of security relating to Utah Housing's website known to the Lender.
5. The Lender shall give all forms, notices or documents required to be given by any statute, rule or regulation, administrative publication, contract, or rider thereto with respect to Mortgage Loans delivered to Utah Housing including, but not limited to, any requirements relating to Limited English Proficiency (LEP). The Lender shall provide such reports and information, as Utah Housing shall reasonably request to confirm compliance with this covenant.
6. The Lender represents and warrants with respect to each copy of a document delivered to or submitted for inspection by Utah Housing that the same is a true, correct, and complete copy of the original thereof.
7. The Lender shall obtain as much information as is reasonably possible and notify Utah Housing as soon as possible if it should become aware of:<sup>1</sup>
  - (a) Any additional cash transactions taking place to circumvent Utah Housing's Acquisition Cost Limits,
  - (b) Any inaccuracy in gift letters or sources of Borrower's down payment, Closing costs or other cash contributions to a Mortgage Loan transaction,
  - (c) Misrepresentations of Borrower's income,
  - (d) Borrower's failure to occupy the Mortgaged Premises as Borrower's Principal Residence,
  - (e) Borrower using more than 15% of the area of the Mortgaged Premises primarily in a trade or business, (except for a HomeAgain one-two unit primary residence) or

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<sup>1</sup> Section 3.3 revised 2.12.19

- (f) Borrower using the Mortgaged Premises as investment property as a recreational or second home, or
- (g) Borrower renting any part of the Mortgaged Premises on a FirstHome Loan.

The Lender shall indemnify, defend and hold Utah Housing harmless from any loss, damage or expense that Utah Housing may sustain as a result of any failure on the part of the Lender to properly perform its services, duties and obligations under the terms of the Participation Documents.

### 3.4 Changes

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In the event that there is any change to the Lender's situation or circumstances (legal or financial) that renders any previously submitted information inaccurate or misleading, the Lender shall promptly give notice to Utah Housing of such change.

### 3.5 Lender's Representations, Warranties and Covenants for Mortgage Loans

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The Lender hereby represents warrants and agrees that with respect to each Mortgage Loan, each of the following statements will be true and correct at the time of delivery of the Mortgage Loan to Utah Housing, and at the time of purchase of the Mortgage Loan by Utah Housing:

1. Each mortgage loan submitted to Utah Housing is a Mortgage Loan and is in compliance with all terms and conditions of the Participation Documents.
2. The Mortgage Loan is an interest-bearing obligation secured by a Mortgage, the assignment of which to Utah Housing will convey a first lien on mortgaged property, including land and improvements thereon located in Utah, constituting a single-family Residence identified and described in the Mortgage securing the Mortgage Loan, and will constitute a valid and enforceable first lien in favor of Utah Housing on the land and improvements described therein, and such property will be free and clear of all other liens and encumbrances and will be subject only to real property taxes and assessments not yet due, and permitted liens and encumbrances as set forth in the Participation Documents.
3. The Residence, with respect to which the Mortgage Loan is made, is covered by a valid and subsisting Standard Hazard Insurance Policy or such other coverage as may be required in the Participation Documents with an endorsement by the insurer in favor of the Lender and its successors and assigns, issued by a company lawfully doing business in the State, providing as a minimum:

# Participation Agreement

## Representations, Warranties and Covenants



- a. For a first mortgage secured by a property on which an individually held insurance policy is maintained, Utah Housing requires coverage equal to the lesser of the following:
    - 100% of the insurable value of the improvements, as established by the property insurer; or
    - The unpaid principal balance of the mortgage, as long as it at least equals the minimum amount, 80% of the insurable value of the improvements, required to compensate for damage or loss on a replacement cost basis. If it does not, then coverage that does provide the minimum required amount must be obtained.
  - b. When the existing coverage for a property that secures a second lien mortgage does not provide coverage equal to the lesser of 100% of the insurable value of the property improvements or the combined unpaid principal balance of the first and second mortgages (as long as that equals at least 80% of the insurable value of the improvements), the Lender must require the borrower to obtain appropriate endorsements to bring the coverage in line with Utah Housing's requirements. A copy of any endorsements should be sent to Utah Housing's Servicing department, 2479 South Lake Park Blvd, West Valley City, UT 84010.
2. The Mortgage Loan is insured by FHA or guaranteed by VA in an amount and manner set forth in the Participation Documents. Such insurance or guarantee is in full force and effect and will insure to the benefit of Utah Housing as mortgagee.
  3. The Mortgage Loan is a conventional, uninsured mortgage underwritten through Freddie Mac's Loan Product Advisor (LPA), receiving a Risk Class of "Accept/Eligible" from LPA, using the Home Possible Advantage for HFA's selection.<sup>2</sup>
  4. The proceeds of the Mortgage Loan are being devoted to providing a Residence for Low and Moderate Income Persons, within the Income Limits established by Utah Housing; and no cash proceeds of the Mortgage Loan shall be disbursed to the Borrower or any other person for the benefit of the Borrower, including amounts representing value of any land owned by the Borrower prior to Closing, except for the reimbursement of excess cash deposits or cash down payment paid by the Borrower prior to Closing.
  5. The Mortgage Loan is payable as specified in the Participation Documents.

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<sup>2</sup> Section 3.5 revised 9.3.19

# Participation Agreement

## Representations, Warranties and Covenants



6. In the Lender's judgment, the Mortgage Loan is, in all respects, a prudent investment at the purchase price paid by Utah Housing. The Mortgage Loan is of sufficient quality that the Lender would be willing to own the Mortgage Loan.
7. The interest rate on the Mortgage Loan does not exceed the rate specified in the Mortgage Purchase Agreement. Monthly installments shall be due on the first day of each month and shall be payable in monthly installments on the principal amount of the Mortgage Loan outstanding on the due date of each installment.
8. Total settlement and financing costs paid by the Borrower and seller of the Residence are accurately reflected on the Closing Disclosure signed by the Borrower and seller of the Residence in connection with the Closing.
9. The Current Annual Household Income (FirstHome Loan) or the Qualification Income (HomeAgain, Score, or NoMI Loan) of the Borrower does not exceed the Income Limits as listed on Exhibit A.
10. The Acquisition Cost of the Residence, with respect to which the Mortgage Loan is made, does not exceed the Purchase Price limits as listed on Exhibit A.
11. The Mortgaged Premises constitutes a single-family Residence occupied by the owner thereof as Borrower's Principal Residence with title held by such owner in fee simple, and is not subject to any Leasehold interests or life estates.
12. The Borrower had the legal capacity to execute the Mortgage and all documents relating thereto, and the Mortgage Loan and the Mortgage are valid and binding legal obligations of the Borrower, enforceable in accordance with their terms.
13. For a FirstHome Mortgage Loan, the Borrower has not had a present ownership interest in any Principal Residence at any time during the three year period preceding the date the related Mortgage Loan delivered to Utah Housing was executed; provided, however, that the foregoing statement set forth shall not apply in the following circumstances:
  - (a) Borrower is a Veteran, or
  - (b) Borrower qualifies as a Single Parent.
14. The Borrower does not own any other properties purchased under any Utah Housing Program which will be retained for any purpose.
15. The Mortgage Loan is the subject of a title insurance policy which complies with all requirements of the Participation Documents.

# Participation Agreement

## Representations, Warranties and Covenants



16. The Mortgage Loan is in compliance with credit underwriting and property appraisal requirements of Fannie Mae, Freddie Mac, FHA, VA and the Participation Documents.
17. No payment required by the Mortgage is Delinquent, no event of Default under the Mortgage which has occurred is continuing, and no event has occurred which would, by the passage of time or giving of notice thereof, constitute an event of Default under the Mortgage.
18. For a FirstHome, HomeAgain, or Score Loan, the improvements to the Mortgaged Premises are fully completed except as contemplated by the Rehabilitation to be completed under a Mortgage Loan insured by FHA under its Streamlined 203(k) program. All such improvements are, or shall be in the case of Mortgage Loans insured under its Streamlined 203(k) program, completed as represented in the appraisal report, in compliance with all building and zoning codes, restrictions, regulations and other codes and regulations of the city, town or county in which the Mortgaged Premises is located, and are located entirely upon the real property constituting the Mortgaged Premises.
19. Without limiting the generality of the foregoing, the Mortgaged Premises have culinary water and sewage disposal facilities which (a) are connected to completed, functioning city, town, or county governmental ("municipal") culinary water system or a stock water company culinary water system and a municipal sewage disposal system; or (b) if not connected to a municipal or stock water company water system and/or municipal sewer system, include a functioning well and/or septic tank, and/or related or similar systems which are wholly dedicated to the use of the Mortgaged Premises, which systems are located wholly within the boundaries of the Mortgaged Premises and which are wholly owned by the Borrower. All improvements to the culinary water and sewage disposal systems are in compliance with all building, health and zoning codes, restrictions, regulations and other codes and regulations of the city, town or county in which the Mortgaged Premises is located.
20. The Mortgaged Premises and improvements thereon have not been damaged in any way so as to adversely affect the value of the Mortgage to Utah Housing or the use of such premises and improvements for their intended purpose, and there is no pending or threatened proceeding for the total or partial condemnation of the Mortgaged Premises.
21. The Mortgaged Premises, the improvements thereon and their intended use comply with all laws or rules and regulations relating to or governing the protection of the environment; and there is no threatened or pending case or proceeding directly involving the Mortgaged Premises in which compliance with any such law, rule or regulation is or will be in issue.



# Participation Agreement

## Representations, Warranties and Covenants



22. If the Mortgaged Premises constitute a Condominium Unit or PUD Unit, such unit is located within a Condominium or PUD Project which meets the requirements of the Participation Documents.
23. The terms, covenants and conditions of the Mortgage have not been changed in any respect which would materially affect its value, validity or enforceability, the prompt payment of the Mortgage Loan, or the security of the lien of the Mortgage.
24. The Mortgage is not subject to any existing assignment or pledge, and the Lender has good title thereto and full right and authority to assign and transfer the same and to endorse and deliver the Note secured by such Mortgage and all documents described in the Participation Documents free and clear of encumbrances except permitted liens and encumbrances as described in the Participation Documents.
25. No counterclaim, offset, defense or right of rescission exists which can be asserted and maintained by the Borrower or Borrower's successor in interest against Utah Housing.
26. The Mortgage complies with all applicable local, State and Federal laws, rules and regulations which govern the affairs of the Lender and the Borrower.
27. The Lender has not advanced funds, or directly or indirectly induced or solicited any advance of funds by another for the payment of principal, interest, or Escrow Payments required by the Mortgage.
28. The information set forth in the mortgage submission package has been accurately stated, and the amounts of the principal balance and interest, including accrued interest, if any, are justly due and owing.
29. Each Mortgage, financing statement, and any other document required to be filed in a public office to perfect the lien of the Mortgage for the benefit of Utah Housing against third parties has been duly and timely filed, registered, or recorded by the Lender in the proper public office in order to give constructive notice thereof to all subsequent purchasers or encumbrances.
30. The lien of, or estate created by, the Mortgage has not been satisfied, subordinated or impaired, in whole or in part, except for the payment of principal and interest as disclosed to Utah Housing by the Lender prior to Utah Housing's purchase of the Mortgage. No part of the mortgaged property has been released therefrom, nor has any interest or participation in the Mortgage been assigned, and the Lender has not executed any instrument of release, cancellation, subordination, or satisfaction with respect to the mortgage.

31. Reproductions and replicas of Utah Housing Forms generated by the Lender, as permitted in the Participation Documents, contain, without deviation and in order, all language contained and information to be reported in such Utah Housing Forms.
32. The Lender has complied with all applicable local, State and Federal law with respect to the Mortgage Loan.

### **3.6 Utah Housing's Right to Reject Mortgage Loans**

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1. Notwithstanding anything in Participation Documents to the contrary, Utah Housing shall, at all times, have the right to decline to purchase any Mortgage Loan offered or submitted to it by the Lender if, in the reasonable opinion of Utah Housing, the Mortgage Loan does not conform to the requirements of FHA/VA, Fannie Mae, Freddie Mac, the Act, Utah Housing's Rules, the Participation Documents, and/or the applicable General Resolution.
2. The Lender agrees to pay a Mandatory Non-Delivery fee to Utah Housing for any first mortgage loan not purchased by Utah Housing where an MPA has been issued and a Subordinate Loan was funded by Utah Housing. The Non-Delivery fee will be calculated at 6% of the principal sum listed on the First Mortgage Promissory Note.

### **3.7 Continuing Nature of Representations, Warranties and Covenants**

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1. All of the Lender's representations, warranties, covenants and agreements contained in the Participation Documents shall remain operative and in full force and effect, regardless of: (a) any investigation made by or on behalf of Utah Housing; (b) delivery of any payment with respect to the Mortgage Loans delivered pursuant to the Participation Documents; and (c) any expiration or termination by Utah Housing of the Mortgage Purchase Agreement.
2. The Lender shall, at its expense, execute all other documents and take all other steps requested by Utah Housing from time to time to perform the agreements contained in the Participation Documents.

### **3.8 Contractual Basis of Relationship between Utah Housing and Lender**

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All Mortgage purchase transactions between the Lender and Utah Housing are on a contractual basis. The contract consisting of the Participation Documents as the same may be amended from time to time.

### **3.9 Representations, Warranties and Covenants of Utah Housing**

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# Participation Agreement

## *Representations, Warranties and Covenants*



1. Utah Housing represents and warrants that the issuance of each Mortgage Purchase Agreement has been duly authorized and is, in all respects, in compliance with the Act, Utah Housing's By-Laws and Rules, the Participation Documents and, if applicable, the General Resolution.
2. With respect to Nonpublic Personal Information (NPI), Utah Housing agrees to implement and apply appropriate security measures designed to meet the objectives of the Federal Trade Commission Information Safeguards Rule. Utah Housing will indemnify, defend and hold harmless the Lender for any liability or expense arising from the use or misuse by Utah Housing employees of NPI provided by the Lender to Utah Housing.

## Section 4 Purchase of Mortgage Loans

### 4.1 Mortgage Purchase Agreement

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From time to time during the term hereof, Utah Housing agrees to purchase Mortgage Loans from the Lender in accordance with the Participation Documents. The sale of each Mortgage Loan to Utah Housing shall be evidenced and governed by a Mortgage Purchase Agreement as provided in the Selling Supplement and by all other Participation Documents.

### 4.2 Non-Conformity with Agreement

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Utah Housing will be under no obligation to purchase a loan if it is found that the loan does not comply with all the terms and conditions of the Participation Documents.

### 4.3 Servicing Released

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The Lender agrees to transfer to Utah Housing the Servicing Rights of each Mortgage Loan purchased hereafter by Utah Housing subject to the following terms:

1. Utah Housing shall pay to the Lender a servicing release fee (SRP) or premium at the time a Mortgage Loan is purchased by Utah Housing. The Lender's authorized officer may request a copy of the current SRP and premium schedule from Utah Housing's Vice President of Mortgage Banking.
2. Utah Housing will not pay an SRP for the Subordinate Loan.
3. Nothing herein shall prevent Utah Housing from transferring its rights to service any Mortgage Loan subject to this Agreement.

### 4.4 No Solicitation

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The Lender shall not engage in any attempt to entice any Borrower, whose Mortgage Loan is purchased by Utah Housing, to refinance the Mortgage Loan by: (a) soliciting the Borrower in any manner as a consequence of the Lender's maintenance of the Borrower's Mortgage Loan data files or (b) entering into an agreement with any Borrower prior to the purchase of the Mortgage Loan by Utah Housing.

### 4.5 Other Rights

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# Participation Agreement

## *Purchase of Mortgage Loans*



Except as modified herein, the provisions of this Section 4 do not adversely affect the rights accrued to either party or any other obligations arising under the Participation Documents. All other terms and provisions of the Participation Documents shall remain in full force and effect except as expressly amended hereby.

*Remainder of page intentionally left blank.*

## Section 5 Continuing Obligations

Utah Housing has multiple Loan Programs that are described later in this document; however, the following general requirements apply.

### 5.1 Annual Financial Statements

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1. The Lender shall submit to Utah Housing annually, its audited financial statements prepared under generally accepted accounting principles, including the opinion of an independent public accountant. When the Lender's financial condition is reflected on a consolidated basis with that of a parent company or companies, consolidating information shall be submitted to Utah Housing.
2. If the Lender is an FDIC or NCUA insured depository that is supervised and examined by a State or Federal regulatory agency, and the Lender submits to Utah Housing a complete regulatory report containing comprehensive financial information (such as the 10-K) with a certification that the report is identical to that furnished to its supervising authority, the Lender will not be required to provide an independent public accountant's opinion.

### 5.2 Lender Audits by Utah Housing

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1. Utah Housing may audit the Lender periodically to test for compliance with the requirements set forth in the Participation Documents.
2. Utah Housing shall provide reasonable notice to the Lender of the beginning date of any audit and may request that specific files, records and materials be made available to Utah Housing. Representatives of Utah Housing may conduct the audit at the offices of the Lender, or may request the Lender to deliver files, records or other appropriate material to Utah Housing's office for the audit. The Lender shall provide working space for Utah Housing's representatives and deliver such records, files and materials by the dates specified by Utah Housing.
3. The audit scope may include, but not be limited to, such areas as: (a) compliance with Utah Housing requirements and Federal and State laws and regulations, (b) underwriting quality, (c) compliance with FHA or VA requirements, (d) document retention, (e) cash control, escrow accounting and remittance compliance.
4. The Lender agrees to take corrective actions to cure any deficiencies or violations of the applicable requirements that are found through the audits. When timely and adequate corrections are not (or cannot) be completed to the satisfaction of Utah Housing, the Lender will

be deemed to be in Default and Utah Housing may pursue any and all remedies outlined in Participation Documents.

### **5.3 Compliance with Applicable Law**

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In originating and enforcing Mortgage Loans, the Lender agrees to comply with all applicable local, State, and Federal laws, including, without limitation, those that relate to fair housing, equal credit opportunity, truth in lending, settlement procedures, fair debt collection practices, fair credit reporting, information reporting requirements of the Federal and State governments, notice of servicing assignment, persons with disabilities, Fair Housing, wrongful discrimination in residential lending and all other laws relating to financing of the purchase of homes.

*Remainder of page intentionally left blank.*

## Section 6 Remedies

### 6.1 Duty to Repurchase Mortgage Loans

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1. Utah Housing agrees to notify the Lender, in writing, of the existence of any noncompliance known to Utah Housing giving rise to any obligations of the Lender under this Section 6. The Lender shall have thirty (30) days after the date of such notification within which to:
  - (a) Repurchase such Mortgage Loan; or
  - (b) Submit further information to Utah Housing and to request that Utah Housing reconsider the basis upon which the repurchase notice was issued.
2. In the event Utah Housing rejects a reconsideration request of the Lender, and reconfirms its repurchase notice, the Lender shall, within thirty (30) days after the date Utah Housing delivers its reconfirmation of the repurchase notice, either:
  - (a) Repurchase such Mortgage Loan, or
  - (b) Cure the deficiencies identified by Utah Housing to the satisfaction of Utah Housing.
3. The Lender shall repurchase from Utah Housing (A) in the case of a NoMI loan, a Mortgage Loan and any Utah Housing Subordinate Mortgage Loan made in connection therewith, or (B) in the case of a FirstHome, HomeAgain, or Score loan, a Mortgage Loan and a fee of 6% of the Mortgage Loan under any one or more of the following circumstances:
  - (a) If any of the original documents with respect to a Mortgage Loan differ in any material respect from the copies delivered to Utah Housing;
  - (b) If any of the underwriting analysis performed by the Lender is based on data which differs in any material respect from the data provided by the Applicant or any third party whose verification of such data was obtained;
  - (c) The Lender fails to deliver any documents or information as Utah Housing reasonably requests to be delivered following the purchase of an Incomplete Mortgage by Utah Housing within the time specified in the Participation Documents;
  - (d) For a NoMI, FirstHome, HomeAgain, or Score loan: improvements, alterations or repairs to the property securing the Mortgage Loan as contemplated by the appraisal are not completed within 90 days of the execution of the Mortgage;
  - (e) In the event that FHA or VA: (i) cancels coverage, (ii) cancels the mortgage guarantee or (iii) denies a claim because of fraud, misrepresentation or omission of a material fact or any other reason affecting the Mortgage Loan for mortgage insurance or guarantee;



- (f) The Lender fails to: (i) pay premiums for hazard insurance, flood insurance or FHA insurance or (ii) pay taxes or other governmental assessments or charge as required;
  - (g) In the event that any warranty or representation made by the Lender, pursuant to the Participation Documents, including those set forth herein, are, in the opinion of Utah Housing, untrue or incorrect when made or upon delivery of a Mortgage Loan to Utah Housing;
  - (h) In the event that the Borrower or any other party in the Mortgage transaction has made any false representation in connection with Mortgage Loan, whether or not the Lender was a party to or had knowledge of such false representation;
  - (i) If it is discovered that the mortgage loan is not, in the reasonable opinion of Utah Housing, Fannie Mae, Freddie Mac, FHA, or VA a compliant Mortgage Loan;
  - (j) Any government sponsored enterprise or other third party that purchases the Mortgage Loan from Utah Housing and subsequently requires Utah Housing to repurchase such Mortgage Loan due to circumstances resulting from a breach by the Lender of any of the Lender's representations and warranties contained in the Participation Documents;
4. If a Mortgage Loan has not been repurchased within 30 days of Utah Housing's written notice to the Lender to repurchase the Mortgage Loan, Utah Housing may, at its sole discretion, net the repurchase amount from a future purchase of one or more other Mortgage Loans.
5. If a Mortgage Loan is refinanced within the first six months of Utah Housing purchasing the Mortgage Loan by the same Lender from whom Utah Housing purchased the Mortgage Loan, Utah Housing may require the Lender to reimburse the Servicing Release Premium (SRP) paid to the Lender at the time the Mortgage Loan was purchased. The Lender will be notified of the early payoff and the SRP will either be invoiced or netted from a future purchase.<sup>3</sup>

## 6.2 Utah Housing Remedy Fee

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In addition to all other Utah Housing rights and remedies hereunder, the Lender acknowledges and agrees to pay the applicable fees set forth in the Utah Housing Fee Schedule (Section 19) in the [Utah Housing Selling Supplement](#).

## 6.3 Early Delinquency

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<sup>3</sup> Section 6.1 revised 7.30.18

If, after the date of purchase, any of the first six Mortgage Loan payments are missed and the delinquency caused by the missing payment(s) continues for three (3) consecutive months or more, the Lender shall, at Utah Housing's sole discretion, provide (a) an indemnification for any losses Utah Housing may suffer associated with the Servicing of the specified Mortgage Loan and/or (b) pay to Utah Housing \$2,500 in full satisfaction of such obligation and (c) reimburse Utah Housing the Servicing Release Premium paid to the Lender at time the loan was purchased by Utah Housing.

### **6.4 Purchase Price for Re-Purchased Mortgage Loan**

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The Lender shall repurchase a Mortgage Loan from Utah Housing for the sum of:

1. The unpaid principal balance.
2. Any amounts held in the Borrower escrow account, PLUS (+)
3. Any amounts already obligated to be paid out of escrow, PLUS (+)
4. Any interest accrued to the date payoff funds are received by Utah Housing, PLUS (+)
5. Any servicing release premium paid by Utah Housing to the Lender, PLUS (+)
6. Any escrow overdrafts, expense advances or corporate advances relating specifically to the Mortgage Loan, PLUS (+)
7. In the case of a FirstHome, HomeAgain or Score loan a fee of 6% of the Mortgage Loan where a Subordinate Loan was funded by Utah Housing.

### **6.5 Bankruptcy, Insolvency or Debarment of Lender**

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1. The Lender shall immediately notify Utah Housing by phone and in writing within two business days of any of the following occurrences:
  - (a) The Lender shall initiate or suffer any proceedings of insolvency or reorganization under the Bankruptcy Act, or any other Federal or State receivership law or make any common law assignment for the benefit of creditors or written admission by the Lender of its inability to pay debts generally as they occur;
  - (b) The issuance of a decree or order of a court, agency or supervisory authority having jurisdiction in the premises appointing a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceeding affecting the Lender respectively; or substantially all of its properties, or for the termination

- or liquidation of its affairs, if such decree or order shall have remained in force undischarged or unstayed for a period of two months;
- (c) The consent by the Lender respectively, to the appointment of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceeding affecting the Lender or substantially all of its properties;
  - (d) The Lender shall be put on probation, be debarred or have its activities restricted in any manner whatsoever by any agency of the Federal or State government; or
2. Any occurrence described above shall be deemed to be a Default and shall be grounds for Suspension, Termination or any other remedies as provided for in this Section 6.

### 6.6 Termination, Suspension or Default Actions

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1. Should the Lender fail to perform its obligations, duties and responsibilities in accordance with the Participation Documents, Utah Housing shall find that any representation or warranty contained in the Participation Documents is untrue, or the Lender is otherwise regularly or grossly negligent in its duties, as determined by Utah Housing, the Lender will be in Default and Utah Housing may:
  - (a) Send the Lender written notice of Termination, as a result of which, effective immediately, the Lender cannot participate in the Program for the period of at least three years; provided, however:
    - (i) Any Lender terminated for the first time because of failure to sell the required number of Mortgage Loans to Utah Housing shall not be eligible to participate in the Program for the period of at least six months from the date of the termination notice. Following the six-month period, the Lender may re-apply to participate by submitting a \$300 application fee and other materials customarily required of a new-applicant organization.
    - (ii) Any Lender terminated for the second time because of failure to sell the required number of Mortgage Loans to Utah Housing shall not be eligible to participate in the Utah Housing Program for the period of at least one year from the date of the termination notice. Following the one-year period, the Lender may re-apply to participate by submitting a \$500 application fee and other materials customarily required of a new-applicant organization.
  - (b) Send a written notice of Suspension to the Lender whereby, effective immediately, no further Mortgage Purchase Agreements will be executed by Utah Housing and no further

Mortgage Loans will be purchased by Utah Housing until such time as Default is cured;  
and/or

- (c) Send a written notice of Default to the Lender giving the Lender one month from the date of said notice to cure Default to avoid consequences specified in this section; and/or
- (d) Remove the Lender name from all Participating Lender lists, whether printed or on a website.

### 6.7 Other Remedies

1. Utah Housing shall have all remedies available at law or in equity to enforce the requirements, warranties and covenants of the Lender hereunder and under the Participation Documents including, but not limited to, the actions, including the assessment of financial penalties, described in the Participation Documents, rescission of the Participation Documents, termination of the designation as Lender, equitable relief by way of injunction (mandatory or prohibitory) to prevent the breach or threatened breach of any provision hereof or to enforce performance hereof.
2. No delay in exercising or omission to exercise any remedy, right or power accruing upon any event of Default or breach by the Lender, shall impair that remedy, right or power or shall be deemed to be a waiver of any event of Default or breach or acquiescence therein. Every remedy, right and power available to Utah Housing may be exercised from time to time and as often as may be deemed expedient by Utah Housing.
3. No waiver of any event of Default or breach under any Participation Document shall extend to or affect any subsequent event of Default or breach or shall impair any right, remedy, or power consequent thereon.
4. No remedy conferred upon or reserved to Utah Housing herein is intended to be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to any other remedy given hereunder or otherwise to Utah Housing now or hereafter existing. The exercise of a remedy by Utah Housing or any one or more of them shall not in any way alter or diminish the rights of Utah Housing to any other remedy provided herein or by law.
5. In the event of any Default and/or breach by the Lender, Utah Housing shall be entitled to reimbursement from the Lender of all of Utah Housing's costs in enforcing any of the terms of the Participation Documents including attorney fees.
6. Utah Housing may choose any one or more of the remedies above that it determines will most suitably resolve a Default or breach of the Participation Documents.

7. It is expressly stipulated and agreed that the Third Judicial District Court in and for Salt Lake County, State of Utah, shall have exclusive jurisdiction and venue of all proceedings based on or arising out of the enforcement of the terms of the Participation Documents as amended, or the collection of damages resulting from a Default or breach of the Participation Documents, as amended.

### **6.8 Request for Reimbursements, Refunds or Repayments**

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1. After Utah Housing has purchased a Mortgage Loan, in the event that the Lender desires that Utah Housing reimburse, refund, repay or otherwise pay the Lender any sum as a result of any aspect of the purchase of such Mortgage Loan, whether or not the amount that is claimed was an inappropriate benefit to the Borrower, and whether or not the amount that is claimed was an inappropriate benefit to Utah Housing, or whether or not the amount claimed was of no benefit to the Lender, Utah Housing or the Borrower, the Lender shall make a written claim (a "Claim") for such amount, together with a detailed explanation for the Claim and all back-up information available to the Lender, addressed to the Senior Vice President/COO of the Utah Housing (a "Request for Reimbursement") no later than 120 days after the date of the purchase of the Mortgage Loan by Utah Housing (the "Reimbursement Claim Period").
2. If Utah Housing determines that (a) the Request for Reimbursement is made within the Reimbursement Claim Period, (b) the Claim specified in the Request for Reimbursement is valid, and (c) payment of all or a portion of the amount of the Claim would not adversely affect the operations of Utah Housing or the relationship of Utah Housing to the Borrower, then Utah Housing shall pay the Lender all of the Claim or such lesser portion thereof that Utah Housing deems appropriate under the circumstances. The Lender acknowledges and agrees that Utah Housing's inability to be made whole by the Borrower or a third party if it pays a Claim or that Utah Housing has completed an escrow review with the Borrower prior to the date of the Claim is reasonable grounds for determining that the operations of Utah Housing or the relationship of Utah Housing to the Borrower will be adversely affected.
3. The Lender may not make a Request for Reimbursement with respect to a Mortgage Loan after the applicable Reimbursement Claim Period. Any Request for Reimbursement made after the applicable Reimbursement Claim Period shall be rejected by Utah Housing.<sup>4</sup>

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<sup>4</sup> Section 6.8 revised 9.3.19

## Section 7 Other Agreements

### 7.1 No Waiver

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No waiver by either party of any covenant or condition of the Participation Documents shall be valid unless in writing and signed by the party so waiving and no waiver of any term or condition by Utah Housing shall be deemed a continuing waiver. Inaction or failure to demand strict performance of any covenant or condition of the Participation Documents shall not be deemed a waiver.

### 7.2 Jurisdiction

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This Agreement is made and entered into in the State and all questions relating to the validity, construction, performance and enforcement thereof shall be governed by the laws of the State of Utah.

### 7.3 Invalidation

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Invalidation of any one of the provisions of this Agreement, by judgment or court order, shall in no way affect any other provisions herein contained, which provisions shall remain in full force and effect.

### 7.4 Successors

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The Lender and Utah Housing hereby agree that all of the covenants and agreements herein contained shall extend to and be obligatory upon all successors of the respective parties.

### 7.5 Termination by Lender

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In the event that the Lender shall no longer desire to originate and sell Mortgage Loans to Utah Housing hereunder, the Lender shall give written notice thereof to Utah Housing, in which case Utah Housing shall no longer be obligated hereunder to purchase Mortgage Loans; provided, however, that in such event, the Lender shall remain liable for all of its obligations under the Participation Documents so long as any Mortgage Loans which were previously purchased from the Lender remain in existence.

# Participation Agreement

## Exhibit A to Participation Agreement



### Section 8 Exhibit A to Participation Agreement

Effective 01/03/2022

Loan Program	Utah Counties	Family Size 1-2 Income Limits	Family Size 3+ Income Limits	Purchase Price Limits
		<b>Household Income</b>		
<b>FirstHome</b>	Beaver, Cache, Carbon, Daggett, Emery, Grand, Millard, Rich, Sevier, Uintah	\$85,300	\$98,000	\$367,500
<b>FirstHome</b>	Box Elder	\$88,900	\$103,700	\$564,700
<b>FirstHome</b>	Davis, Morgan, Summit, Wasatch, Weber	\$108,700	\$126,800	\$564,700
<b>FirstHome</b>	Duchesne, Garfield, Iron, Kane, Piute, San Juan, Sanpete, Wayne	\$102,300	\$119,400	\$432,900
<b>FirstHome</b>	Juab, Utah	\$102,300	\$119,400	\$542,800
<b>FirstHome</b>	Salt Lake	\$92,200	\$106,000	\$457,200
<b>FirstHome</b>	Tooele	\$89,500	\$102,900	\$457,200
<b>FirstHome</b>	Washington	\$85,300	\$98,000	\$421,000
		<b>Qualifying Income</b>		
<b>Score (FHA/VA)</b>	All Counties	\$85,300	\$481,200	Purchase Price Limit
<b>HomeAgain (FHA/VA)</b>	All Counties	\$119,400	Follow FHA Single Family Loan Amount Guidelines	

# Participation Agreement

## Exhibit A to Participation Agreement



<b>HomeAgain</b> Owner Occupied Two- Unit (ADU, Duplex, Mother-in-Law Apartment)	All Counties	\$119,400	Follow FHA 2+ unit FHA Guidelines (Home must be appraised as a 2+ unit)
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\*Loan amount cannot exceed [FHA Loan Amount Limits](#) for the county in which the property is located.

Loan Information	FirstHome Loan	HomeAgain Loan	Score Loan	NoMI
<b>Allowable Fees</b>				
Maximum Lender Loan Origination Fee	1%	FHA Guidelines	FHA Guidelines	Fannie Mae/ Freddie Mac Guidelines
<b>Servicing Release Fee Paid to Lender on First Mortgage Loans</b>				
Refer to <a href="#">Section 4.3</a>				
<b>No Servicing Release Fee Paid to Lender for Second Mortgage Loans</b>				