

TENNESSEE HOUSING DEVELOPMENT AGENCY  
PRESERVE LOAN PROGRAM AGREEMENT

This Preserve Loan Program Agreement is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the "Agreement") between the Tennessee Housing Development Agency ("THDA") whose address is 404 James Robertson Parkway, Suite 1200, Nashville, Tennessee 37243-0900, and \_\_\_\_\_, whose address is \_\_\_\_\_ ("Preserve Loan Partner").

WITNESSETH:

WHEREAS, Preserve Loan Partner wishes to originate, underwrite, process, and close THDA Preserve Loans and supervise disbursement of loan proceeds during construction in accordance with the terms of this Agreement and in accordance with the program guidelines (as defined below);

NOW THEREFORE, in consideration of the premises and compensation to Preserve Loan Partner as set forth herein, the parties agree as follows:

1. Receipt of Program Announcement and Program Guidelines.

Preserve Loan Partner acknowledges receipt of notice from THDA regarding the Preserve Loan Program and THDA's willingness to enter into agreements with those who are qualified to act as a Preserve Loan Partner in connection with Preserve Loans. Preserve Loan Partner also acknowledges receipt of the Preserve Loan Program Guide dated February 2009, which may be subsequently modified and which is incorporated herein by this reference (the "Program Guide"). THDA, at its sole discretion, may modify, in whole or in part, the Program Guide and, upon delivery of notice with respect to any such modified Program Guide in accordance with this Agreement, such modified Program Guide shall become the Program Guide referenced herein.

Preserve Loan Partner acknowledges that THDA will make funds available for Preserve Loans on a first come, first serve basis in accordance with the Program Guide, this Agreement and other agreements entered into with other eligible Preserve Loan Partners. Preserve Loan Partner acknowledges that it may originate, underwrite, and/or process loans intending them to be Preserve Loans, however, but that THDA has no obligation to fund any such loans if they do not meet all requirements and conditions of this Agreement and the Program Guide or if THDA elects to discontinue the Preserve Loan Program or if the funds currently available for Preserve Loans are fully used.

2. Authority of Preserve Loan Partner.

- a. THDA hereby designates and appoints Preserve Loan Partner, an independent contractor, to act as its non-exclusive agent to: (i) originate Preserve Loans; (ii) process and submit applications from eligible borrowers for Preserve Loans; (iii) close all Preserve Loans; (iv) submit all required documentation for Preserve Loans to be funded by THDA; (v) provide for the appropriate disbursement of Preserve Loan proceeds during the construction process to ensure lien free completion of construction; and (vi) conduct all activities in strict compliance with this Agreement and with the Program Guide.
- b. Preserve Loan Partner shall, at all times, be an independent contractor, acting on its own behalf and for its own account, free from supervision, direction or control by THDA. Preserve Loan Partner is without authority, express or implied, to act for or on behalf of THDA in any capacity other than for the purposes expressly set forth in this Agreement.

- c. THDA may, expressly and in writing, vary, add to, or waive all or any part of Preserve Loan Partner's performance under this Agreement or under the Program Guide. No waiver shall be deemed a continuing waiver nor shall the failure on the part of THDA to exercise, wholly or in part, any rights hereunder prevent a later exercise of such, or any other right.
- d. Preserve Loan Partner is not authorized to waive or vary any term of any THDA Commitment, or document evidencing or securing a Preserve Loan, without the prior written consent of THDA.
- e. Preserve Loan Partner is not authorized to service any Preserve Loan.
- f. Preserve Loan Partner is not authorized to consent to the sale, transfer or other disposition of any property securing a Preserve Loan without the prior written consent of THDA.
- g. Preserve Loan Partner shall not use subcontractors to perform any portion of Preserve Loan Partner's obligations hereunder, unless expressly authorized by THDA, in its sole discretion. Preserve Loan Partner shall not delegate authority to execute any documentation required by this Agreement or by the Program Guide.

3. Duties and Responsibilities.

Preserve Loan Partner shall have the following duties and responsibilities:

- a. Establish and maintain eligibility to act as a Preserve Loan Partner, all in accordance with Section 2.1 of the Program Guide.
  - b. Originate, underwrite, process, and close Preserve Loans in strict compliance with the Program Guide and this Agreement.
  - c. Provide for disbursement of Preserve Loan proceeds only for "eligible activities" as specified in the Program Guide and otherwise in strict accordance with the Program Guide.
  - c. Protect THDA's interests with respect to each THDA Preserve Loan, including, without limitation, notifying THDA immediately upon receipt of information indicating any representations or warranties herein are inaccurate or misleading.
  - d. Insure that all personnel with any responsibility for Preserve Loans are familiar with and comply, in all respects, with the Program Guide and this Agreement.
  - e. Hold all funds or documents received in connection with Preserve Loans in trust for the sole benefit of THDA and release or disburse such funds or documents only in compliance with the Program Guide and this Agreement.
  - f. Deliver all THDA Preserve Loan Documents after Preserve Loans are closed, in strict compliance with the Program Guide and this Agreement.
  - h. Generally do and perform or cause to be done and performed all things necessary, required or desirable to insure proper and efficient originating, underwriting, processing, and closing of Preserve Loans and to perform other acts as may be required to comply with the Program Guide and this Agreement.
4. Compensation. Preserve Loan Partner may charge or retain compensation for services rendered as specified in the Program Guide.

5. Inspections/Audits/Reports. At any time during normal business hours as THDA may deem necessary, Preserve Loan Partner shall make all of its books, records and accounts with respect to all Preserve Loans available for examination by THDA or its authorized representative. THDA or its duly authorized representative shall be permitted to audit, examine, copy, and make excerpts or transcripts from such records and audit all contracts, invoices, checks, the Custodial Account, escrow accounts, if any, and other materials relative thereto, as THDA may deem necessary. Preserve Loan Partner shall provide THDA with complete copies of all annual and special audits and reports on a timely basis.
6. Warranties and Representations Regarding Each Preserve Loan. With respect to each Preserve Loan application submitted to THDA, Preserve Loan Partner acknowledges that THDA relies on information supplied by Preserve Loan Partner in determining whether to approve the Preserve Loan application and issue a THDA commitment. Preserve Loan Partner therefore, makes the following representations and warranties for the benefit of THDA in connection with each Preserve Loan application it submits to THDA:
  - a. The Preserve Loan application complies in all respects with the Program Guide.
  - b. The Preserve Loan application does not contain and Preserve Loan Partner has no notice of materially adverse credit information or reputation of the applicant for the Preserve Loan that would detract from the applicant's creditworthiness.
  - c. The Preserve Loan application does not contain and Preserve Loan Partner has no adverse information concerning the real property to secure the Preserve Loan that would materially lessen the extent of THDA's security once the Preserve Loan is closed.
  - d. The Preserve Loan application does not contain and Preserve Loan Partner has no knowledge of any fact or situation which would make the Preserve Loan, when and if made, fail to comply with the Program Guide.
  - e. Preserve Loan Partner complied with and continues to comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations currently in effect or as may be amended or supplemented from time to time in originating, underwriting, processing, and closing each Preserve Loan and disburse the proceeds therefrom.
7. Default and Remedies.
  - a. An event of default hereunder shall occur if THDA reasonably determines that Preserve Loan Partner has failed to originate, process, underwrite, close or disburse the proceeds of any Preserve Loan in a timely and satisfactory manner, or has otherwise failed to perform under this Agreement or under the Program Guide in a timely and satisfactory manner.
  - b. If an event of default occurs, Preserve Loan Partner shall, upon notice from THDA and with no compensation:
    - (i) repurchase any Preserve Loan made by it at 100% of the then current outstanding principal balance, together with other costs or charges related to the Preserve Loan;
    - (ii) withdraw any Preserve Loan application THDA has determined, in its sole discretion, does not to meet the Program Guide.
  - c. In addition, if an event of default occurs, THDA may, with no compensation to Preserve Loan Partner:

- (i) suspend, terminate or otherwise limit Preserve Loan Partner's ability to originate, underwrite, process, and close Preserve Loans;
  - (ii) reduce or modify any or all fees or charges Preserve Loan Partner may be authorized to impose, collect or retain under the Program Guide or this Agreement;
  - (iii) terminate this Agreement at any time without penalty;
  - (iv) void THDA existing commitments to fund any Preserve Loans outstanding at the time of default;
  - (v) exercise all rights or remedies available at law or in equity, including without limitation, specific performance, injunctive relief, and/or damages.
- d. All remedies of THDA herein are cumulative. No exercise of or failure to exercise any right or remedy herein shall preclude further exercise thereof by THDA.

8. Captions and Headings.

The captions and headings to the paragraphs in this Agreement are included for convenience and reference only, and in no way define or limit any of the provisions or otherwise affect their construction or effect.

9. Governing Law.

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Tennessee.

10. Assignment or Transfer.

Preserve Loan Partner shall not assign or transfer, in whole or in part, this Agreement or its duties or obligations hereunder without the prior written consent of THDA, which consent may be withheld at THDA's sole discretion. This Agreement shall inure to the benefit of the parties hereto, their respective successors, and permitted assigns. Upon the assignment of this Agreement by THDA or its successors hereunder, this Agreement shall run in favor of such assignee, such assignee shall succeed to all of the rights of THDA hereunder, and THDA shall be released from any and all obligations under this Agreement.

11. Change in Ownership or Structure.

Preserve Loan Partner shall notify THDA of any name change or any change in ownership or organizational structure at least thirty days prior to the effective date of any such change. Thereafter, Preserve Loan Partner shall provide all information and documentation THDA may reasonably require to demonstrate continued eligibility and suitability to act as Preserve Loan Partner for Preserve Loans.

12. Entire Agreement.

This Agreement, together with the Program Guide which is incorporated herein by this reference as if set forth herein verbatim, constitutes the entire agreement between THDA and Preserve Loan Partner. The Agreement and each of its provisions may not be modified, changed or waived except by a written instrument executed by the party against whom enforcement of the change, waiver or discharge is sought. To the extent there is a conflict or discrepancy between this Agreement and the Program Guide, the more stringent shall apply.

Notwithstanding the foregoing, THDA may, from time to time, modify, amend or revise the Program Guide in THDA's sole discretion. Modifications, amendments or revisions to the

Program Guide shall be effective as of the date specified by THDA. THDA shall provide notice of modifications, amendments or revisions to the Program Guide in accordance with Section 17 below. From and after the date specified by THDA, Preserve Loan Partner shall comply with the Program Guide as so modified, amended or revised.

13. Term of Agreement.

This Agreement shall be for an initial term beginning on the date hereof and extending until the date of the first annual re-certification required under Section 2.1.B. of the Program Guide. Thereafter, this Agreement shall be for successive one-year terms beginning on the date of each subsequent annual re-certification approved by THDA, unless this Agreement is otherwise terminated. THDA, at its sole discretion, shall determine whether Preserve Loan Partner remains eligible to originate, underwrite, process, close and disburse proceeds of Preserve Loans.

Unless sooner terminated as herein provided and with respect to all other duties and responsibilities of the Preserve Loan Partner hereunder, this Agreement shall, with respect to each Preserve Loan, continue from the date hereof until (i) the outstanding balance of the Preserve Loan is paid in full; (ii) the Preserve Loan is assigned to a hazard insurer, to the Preserve Loan Partner, or to the title company; or (iii) Preserve Loan Partner or THDA obtains title to property securing a Preserve Loan via foreclosure or otherwise.

Notwithstanding the foregoing, Preserve Loan Partner shall remain liable for all Preserve Loans originated, underwritten, processed, and closed, and for all disbursements of Preserve Loan proceeds, including, without limitation, the obligation to repurchase as specified in Paragraph 7 herein, regardless of status hereunder and regardless of the status of this Agreement. This provision shall survive any termination or expiration of this Agreement.

14. Termination.

THDA may terminate this Agreement with or without cause and without any compensation to Preserve Loan Partner upon thirty (30) days written notice to Preserve Loan Partner.

In the event of any termination, Preserve Loan Partner shall pay over to THDA, or its duly authorized representative, all principal payments and any other monies collected and held by it pursuant to this Agreement, the Program Guide, and/or pursuant to any other agreement, letter or arrangement relative to all Preserve Loans on or before ten (10) days after the date of termination and shall deliver to THDA, or its duly authorized representative, at Preserve Loan Partner's expense, all documents and records in any way connected with all Preserve Loans within twenty (20) days after the date of termination. From and after the date of termination, THDA shall have no liability whatsoever to the Preserve Loan Partner

15. Compliance with Applicable Law.

Preserve Loan Partner shall, at all times, comply with all applicable Federal, state and local laws, statutes, ordinances, rules, and regulations currently in effect or as may be amended or supplemented from time to time.

16. Indemnification.

If, at any time, any claim, demand, action or legal proceeding is threatened or instituted against THDA by reason of, or in connection with, any conduct, error, action, failure to act, or omission on the part of Preserve Loan Partner, whether such conduct, error, action, omission or failure to act be in connection with the originating, underwriting, processing, closing, or disbursing proceeds of any Preserve Loan or otherwise, Preserve Loan Partner shall defend and hold THDA harmless from any and all loss, liabilities, damages and

expenses including, without limitation, the amount of any judgments, fines or penalties, plus any costs and interest thereon, as well as any and all attorney's fees and all other costs or disbursements paid or incurred in connection therewith, including without limitation, all court costs.

17. Notice.

Notices from THDA to Preserve Loan Partner shall be deemed given when sent to Preserve Loan Partner via facsimile transmission to the most recent facsimile number provided by Preserve Loan Partner as reflected in THDA files, or when sent to Preserve Loan Partner via e-mail to the most recent e-mail address provided by Preserve Loan Partner as reflected in THDA files, or when placed in first class U.S. Mail addressed to Preserve Loan Partner at the address set forth on the first page of this Agreement. Notices from THDA to Preserve Loan Partner shall also be deemed given when posted by THDA on its website at [www.thda.org](http://www.thda.org). Notices from Preserve Loan Partner to THDA shall be deemed given when received by the THDA Single Family Programs Division at the facsimile number specified in the Program Guide or addressed to the attention of the Single Family Programs Division as set forth on the first page of this Agreement. Such addresses may be changed from time to time by either party by giving written notice of such change, addressed as provided herein.

18. Definitions.

All capitalized terms not defined herein shall have the meaning ascribed to them in the Program Guide.

IN WITNESS WHEREOF, THDA and Preserve Loan Partner have hereunto caused this Agreement to be executed by its duly authorized officer, as of the day and date above first written.

PRESERVE LOAN PARTNER: \_\_\_\_\_

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

Title: \_\_\_\_\_

TENNESSEE HOUSING DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Ted R. Fellman, Executive Director

By: \_\_\_\_\_  
Laura B. Sinclair, Director  
Single Family Programs Division