



Homebuyer Equity Leverage Partnership Program Agreement

This is a Homebuyer Equity Leverage Partnership Program Agreement (“Agreement”) dated as of _____, 20__ by and between the Federal Home Loan Bank of Dallas, a federally chartered corporation (“Bank”), and _____ (“Member”). The Bank and Member are sometimes referred to herein individually as a “party” and collectively as the “parties.” Capitalized terms not defined elsewhere herein have the respective meanings ascribed to them in Section 1 of this Agreement. All references in this Agreement to statutes or regulations include such statute or regulation as in effect from time to time, any amendments thereto and any successor statute or regulation.

RECITALS

WHEREAS, the Bank offers the Homebuyer Equity Leverage Partnership Program (the “HELP Program”), which HELP Program is a homeownership set-aside program subject to the provisions of the AHP Regulations;

WHEREAS, Member wishes to enroll in the HELP Program and has completed and submitted to the Bank a HELP application for enrollment in the HELP Program (including any and all documents submitted in connection therewith and including any and all amendments, supplements or other modifications to the Application that may be submitted by Member, collectively, the “Application”), which Application is incorporated into and made a part of this Agreement;

WHEREAS, the Bank approved the Application on _____, 20__; and

WHEREAS, the parties to this Agreement desire to set forth terms that will govern the respective duties and obligations of the Bank and Member with regard to the HELP Program;

NOW, THEREFORE, in consideration of the promises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, and intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS.

“Act” means the Federal Home Loan Bank Act, as amended from time to time.

“Agreement” has the meaning set forth in the Preamble to this Agreement.

“AHP” means the Affordable Housing Program.

“AHP Implementation Plan” means the written AHP Implementation Plan adopted by the Board of Directors of the Bank as in effect from time to time.

“AHP Regulations” means 12 C.F.R. part 1291 as in effect from time to time, any amendments thereto and any successor regulations, which AHP Regulations are incorporated into and made a part of this Agreement.

“Application” has the meaning set forth in the Recitals to this Agreement.

“Bank” has the meaning set forth in the Preamble to this Agreement.

“Business Day” means a day on which the Bank is open for business.

“Events of Default” has the meaning set forth in Section 7.1.

“FHLB” means a Federal Home Loan Bank.

“Finance Agency” means the Federal Housing Finance Agency or any successor entity.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“HELP Documents” means the Act, the Application, the HELP Funding Manual, the AHP Implementation Plan, a Request, the AHP Regulations, any other documents published by the Bank or the Finance Agency relating to the HELP Program or a homeownership set-aside program and any document submitted to the Bank by Member relating to the HELP Program or a Subsidy.

“HELP Funding Manual” means the Bank’s Homebuyer Equity Leverage Partnership Program (HELP) Funding Manual substantially in the form set forth on the Bank’s website from time to time at www.fhln.com.

“HELP Program” has the meaning set forth in the recitals to this Agreement.

“Low- or Moderate-Income Household” means a household that, at the time it is qualified by Member for participation in the HELP Program, has an income of 80% or less of the Median Income for the Area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard, unless such median income standard has no household size adjustment methodology.

“Median Income for the Area” means the median income for the area as published annually by the United States Department of Housing and Urban Development (adjusted for family size).

“member” means an institution that has been approved for membership in an FHLB and has purchased capital stock in the FHLB.

“Member” has the meaning set forth in the Preamble to this Agreement.

“Repaid Subsidy” has the meaning set forth in Section 5.3.

“Request” has the meaning set forth in Section 2.

“Retention Period” means five (5) years from the date of the closing of the purchase of the single-family home that is the subject of a Request.

“Subsidy” means funds provided to a member by the Bank in the form of a direct cash payment pursuant to the HELP Program. The maximum amount of Subsidy that a member can request is set forth in the AHP Implementation Plan.

2. REQUEST FOR SUBSIDY.

Member may from time to time request a Subsidy by completing and submitting a Request for Disbursement of Funds (each a “Request” and collectively the “Requests”) to the Bank, in such forms and with such amendments, restatements and other modifications as may be specified by the Bank, along with all other documents included in or requested by the HELP Funding Manual or requested by the Bank. Subject to the terms and conditions of this Agreement and the HELP Documents, the Bank may agree to provide a Subsidy to Member upon the Bank’s receipt, review and approval of a Request provided that (i) the amount of the Bank’s HELP Program funds allocated for that calendar year has not been exhausted, (ii) Member has not already used the total amount of HELP Program funds that the Member may use (as set forth in the AHP Implementation Plan) and (iii) Member has met all other requirements to receive HELP Program funds. Upon approval of a Request, the Bank will mail a confirmation of approval to Member and will credit Member’s demand deposit account at the Bank (“DDA”) in the amount of Subsidy approved, subject to the Conditions to Funding set forth in Section 3 below.

3. CONDITIONS TO FUNDING.

Prior to the Bank’s disbursement of a Subsidy,

3.1. The Bank shall require Member to certify that the Subsidy received by Member will be provided in compliance with all eligibility requirements of 12 C.F.R. § 1291.6(c).

3.2. Member must be a member of the Bank and have executed and on file at the Bank the current form of the Bank's Master Transactions Agreement, Corporate Certificate of Authority, Advances and Security Agreement and Advances Signature Card.

3.3. Member must complete a HELP Funding Manual, including a Request, and submit the HELP Funding Manual and the Request to the Bank along with any other documents requested by the Bank.

The Bank shall have the right, in its sole reasonable discretion, to withhold or deny disbursement of the Subsidy if, based on the information available to the Bank at the time of Member's Request, the Bank is not satisfied as to Member's creditworthiness and compliance with this Agreement or the HELP Documents.

4. REPRESENTATIONS AND WARRANTIES OF THE PARTIES.

4.1. Each party represents and warrants to the other parties that:

(i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite corporate power and authority to carry on its business as now conducted.

(ii) This Agreement is within such party's corporate powers and has been duly authorized by all necessary corporate action.

(iii) This Agreement has been duly executed and delivered by such party and constitutes a legal, valid and binding obligation of such party enforceable in accordance with its terms.

(iv) The execution and delivery of this Agreement by such party (i) does not require any consent or approval of, or registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (ii) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of such party or any order of any Governmental Authority and (iii) will not violate or result in a default under any indenture, material agreement or other material instrument binding upon such party or its assets.

4.2. Member represents and warrants to the Bank that the information given by Member in the Application is complete and accurate in all respects.

4.3. The Bank represents and warrants to Member that Member has been notified of the requirements of the AHP Regulations, as they may be amended from time to time, and all Bank policies relevant to the Application.

4.4. Member represents and warrants to the Bank that the Bank has notified Member of the requirements of the AHP Regulations, as they may be amended from time to time, and all Bank policies relevant to the Application.

5. COVENANTS OF MEMBER.

Member covenants and agrees with the Bank that:

5.1. Member shall be bound by, comply with and use each Subsidy in accordance with the terms and conditions of (i) this Agreement and (ii) the HELP Documents.

5.2. Member will draw down each Subsidy and pass on the full amount of each Subsidy to the household specified in the Request for the Subsidy as a grant in an amount up to the maximum amount of Subsidy per household as set forth in the AHP Implementation Plan within the period of time specified by the Bank in the AHP Implementation Plan.

5.3. Member shall ensure that any single-family home for which a Subsidy is used in connection with the purchase of the home is subject to a deed restriction or other legally enforceable retention agreement or mechanism in form and substance satisfactory to the Bank, in its sole discretion, requiring that (i) the Bank or its designee is to be given notice of (A) any sale or other transfer of the single-family home occurring prior to the end of the Retention Period or (B) any refinancing, foreclosure, deed-in-lieu of foreclosure or assignment of any lien against the single-family home occurring prior to the end of the Retention Period; (ii) in the case of a sale of the single-family home prior to the end of the Retention Period, an amount equal to the pro rata share of the total amount of the Subsidy granted for the single-family home that financed the purchase or construction of the single-family home, reduced 1/60 for every month the household owned the single-family home (the "Repaid Subsidy"), shall be repaid to the Bank from any net gain realized upon the sale of the single-family home after deduction for sales expenses, unless the purchaser is a Low- or Moderate-Income Household; (iii) in the case of a refinancing prior to the end of the Retention Period, the Repaid Subsidy shall be repaid to the Bank from any net gain realized upon the refinancing, unless the single-family home continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism as described in this Section 5.3 in form and substance satisfactory to the Bank, in its sole discretion; and (iv) the obligation to repay the Subsidy to the Bank shall terminate after any foreclosure, deed-in-lieu of foreclosure or assignment to the United States Secretary for Housing and Urban Development of any lien against the single-family home.

5.4. Member shall promptly give written notice to the Bank of an Event of Default at the earliest possible date after Member's discovery of such Event of Default and after Member has had a reasonable time to investigate and evaluate the occurrence that may constitute an Event of Default, but in any event, notice shall be given no later than fifteen (15) calendar days following Member's discovery of an occurrence that constitutes an Event of Default.

5.5. Member shall establish and maintain files for each household that is the subject of a Request and Member expressly authorizes the Bank to inspect the files and to evaluate the documents within the files for sufficiency in accordance with the Bank's guidelines during normal business hours and upon reasonable advance notice.

6. AMENDMENTS; MODIFICATIONS.

No amendment or other modification, rescission, release, annulment or assignment of any part of this Agreement shall be effective except pursuant to a written agreement executed and delivered to one another by both parties to this Agreement.

7. EVENTS OF DEFAULT.

7.1. If any of the following events ("Events of Default") shall occur with respect to a Request:

(i) any representation or warranty made or deemed made by or on behalf of Member in this Agreement, any HELP Document or any amendment or modification to any of the above shall prove to have been materially incorrect when made or deemed made; or

(ii) Member, as a result of Member's actions or omissions, shall fail to observe or perform any covenant, condition or agreement contained in this Agreement, any HELP Document or any amendment or modification to any of the above;

then, and in every such event, the Bank shall cancel its approval of the Request and Member shall repay to the Bank the Subsidy that is the subject of the Request affected by the Event of Default, plus interest, if determined by the Bank to be appropriate, unless Member cures the Event of Default within a reasonable period of time. For the avoidance of doubt, if the circumstances of the Event of Default cannot be cured within a reasonable period of time, then Member shall repay the *entire* amount of the Subsidy that is the subject of the Request to the Bank.

7.2. Repayment by Member. Upon thirty (30) days' prior written notice to Member, the Bank may debit Member's DDA if Member fails to repay to the Bank the Subsidy that is the subject of a Request affected by an Event of Default. In the event that the balance in Member's DDA is at any time insufficient to reimburse the Bank for such amount, the Bank may apply any other deposits, credits, moneys or other properties of Member then in the possession of the Bank to the reimbursement of such amount.

7.3. Suspension and Debarment. If in the judgment of the Bank or the Finance Agency, as the case may be, Member shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance with the terms of the Act, the Application, a Request or the AHP Regulations, the Bank may, or the Finance Agency may order the Bank to, suspend or debar Member from participation in the AHP (including the HELP Program).

7.4. Party to Enforcement Proceedings. Member consents to be a party to any enforcement proceeding initiated by the Finance Agency regarding the repayment of subsidies received by Member, or the suspension or debarment of Member, and agrees to be bound by the Finance Agency's final determination in the enforcement proceeding.

8. SUCCESSORS AND ASSIGNS; TRANSFER.

8.1. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby.

8.2. Member will make best efforts to transfer its obligations under an approved Request to another member of the Bank in the event of Member's loss of membership in the Bank prior to the Bank's disbursement of the Subsidy that is the subject of the Request. The Bank's prior written consent is required for such transfer. If Member has one or more approved Requests and Member subsequently loses its membership in the Bank, the Bank may disburse the Subsidy to a member of the Bank to which Member has transferred its obligations under the Request(s), or the Bank may disburse the Subsidy through another FHLB to a member of that FHLB that has assumed Member's obligations under the Request(s).

8.3. If, after final disbursement of the Subsidy that is the subject of a Request to Member, Member undergoes an acquisition or consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization shall be deemed to be a permitted successor organization and to assume Member's obligations under the Request.

8.4. Except as otherwise set forth in this Section 8, and except in connection with the acquisition of or merger of the Member with another member of the Bank or another FHLB, the Member may not assign its interest in this Agreement without the Bank's prior written consent. The Bank may deem any attempted assignment without such consent to be null and void.

9. PUBLICITY.

Member agrees that by submitting a Request, Member grants to the Bank, and will cause any individual who is a beneficiary of the Subsidy pursuant to the Request to grant to the Bank, permission for the Bank to publicize and to make available to any party information with respect to the Subsidy that is the subject of the Request, including information regarding the identity of Member receiving a Subsidy and related details regarding the amount and the terms of the Subsidy. The information that the Bank is

authorized to publicize pursuant to this Section 9 may include personally identifiable information of an individual who is a beneficiary of a Subsidy that the Bank would not be authorized to disclose absent the permission granted hereby. The Bank agrees that it will not publicize or disclose any information pursuant to this Section 9 in violation of the Gramm-Leach-Bliley Act.

10. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.

11. ENTIRE AGREEMENT.

This Agreement, together with the Exhibit hereto and the requirements of the HELP Documents, each of which is incorporated into this Agreement, constitutes the entire agreement of the parties and supersedes all prior understandings or agreements, oral or written, among the parties on the subjects addressed in this Agreement. Notwithstanding the foregoing, no provision of this Agreement shall be construed to contradict or supersede any applicable law or regulation. To the extent the requirements of the AHP Regulations are amended from time to time, this Agreement is deemed to incorporate the amendments to conform to any new requirements of the AHP Regulations; however, no amendment to the AHP Regulations shall affect the legality of actions taken prior to the effective date of such amendment.

12. GOVERNING LAW.

This Agreement is subject to the Act and the AHP Regulations, as the same may be amended from time to time, and shall be governed by the applicable statutory and common law of the United States and, to the extent such law incorporates or defers to state law, the laws of the State of Texas, without giving effect to the choice of law principles included therein.

13. NO THIRD PARTY RIGHTS.

This Agreement is intended to benefit only the parties hereto and does not create rights in any other entities or individuals other than a permitted successor organization that assumes the obligations of Member hereunder.

14. SEVERABILITY.

If any provision of this Agreement is found invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect and the invalid or unenforceable provision shall be deemed amended to the least extent necessary to eliminate such invalidity or unenforceability and to carry out the intention of the parties.

15. NOTICES.

Any notice required or permitted to be given or made under this Agreement, including a notice to effect a change in a party's address for notice, must be in writing and addressed to the other parties at the addresses of such parties set forth in Exhibit A hereto, as such Exhibit A may be amended from time to time in accordance with this Section 15, and will be deemed to be properly given or made on the earliest of (i) actual delivery, (ii) two (2) Business Days after being sent, with delivery charges paid by the sending party, by a nationally recognized commercial courier service for delivery on the next Business Day, and (iii) three (3) Business Days after being sent through the United States Postal Service, certified mail, return receipt requested, postage prepaid.

16. HEADINGS.

The parties agree that the headings in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

17. JURISDICTION.

In any action or proceeding brought by the Bank or Member in order to enforce any right or remedy under this Agreement, the parties hereby consent to, and agree that they will submit to the jurisdiction of the United States District Court for the Northern District of Texas or, if such action or proceeding may not be brought and maintained in such court, the jurisdiction of an appropriate District Court for the State of Texas, County of Dallas, unless it is determined that such action or proceeding must be held in the jurisdiction where the Project is located.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

FEDERAL HOME LOAN BANK OF DALLAS

By: _____

Name: Greg Hettrick

Title: Director, Community Investment

(Name of Member)

By: _____

Name: _____

Title: _____

EXHIBIT A

Addresses of Parties for Notice

To the Bank:

Federal Home Loan Bank of Dallas
Delivery:
8500 Freeport Parkway South
Suite 100
Irving, Texas 75063-2547
Attention: Community Investment Department

To Member:

(Name of Member)

(Address)

(City, State, Zip Code)

Attention: _____