

SAN DIEGO HOUSING COMMISSION
Loan Management
1122 Broadway, Suite 300
San Diego, California 92101
(619) 578-7491

DEFERRED LOAN
DOWN PAYMENT/CLOSING COST ASSISTANCE GRANT
AND MORTGAGE CREDIT CERTIFICATE PROGRAMS
LENDER PARTICIPATION AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 200__, by and between the San Diego Housing Commission, a public agency, (“SDHC”), and _____, a _____ (“Lender”).

RECITALS

A. SDHC has implemented a Down Payment/Closing Cost Assistance Grant Program and several deferred loan programs (collectively, the “Loan and Grant Programs”) which assist qualified individuals with the acquisition of new and existing single-family housing and condominiums by providing subordinate mortgage loans (the “Subordinate Loan” or “Subordinate Loans”) to such qualified individuals.

B. SDHC administers the City of San Diego’s Mortgage Credit Certificate Program (“MCC Program”), pursuant to the Tax Reform Act of 1984 pursuant to the applicable federal, state and local policies and procedures.

C. Lender is in the business of making mortgage loans and/or is a mortgage broker. Lender wishes to participate in the Loan and Grant Programs and MCC Program in connection with first trust deed mortgage loans Lender will make available for the acquisition of new and existing single-family housing and condominiums.

AGREEMENT

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are acknowledged, SDHC and Lender hereby agree as follows:

1. **Non-Exclusive Agent.** SDHC hereby designates Lender as its non-exclusive agent for the receipt and processing of applications for Subordinate Loans under the Loan and Grant Programs and Mortgage Credit Certificates under the MCC Program.

2. **Employee Training.** Lender shall assign specific member(s) (see attachment A) of its staff to the Loan and Grant Programs and MCC Program. Such staff members shall have e-mail addresses and internet access which allows them to access SDHC’s web site to receive update information regarding the Loan and Grant Programs and MCC Program. Lender represents and warrants that any member of Lender’s staff that works with borrowers or potential borrowers under the Loan and Grant Programs

and MCC Program are familiar with all applicable laws and regulations with regard to the Loan and Grant Programs and MCC Program and the documentation thereof.

3. **Seminars and Affirmative Marketing.** Lender will subcontract homebuyer education seminars for program applicants according to the U.S. Department of Housing and Urban Development guidelines. Lender shall affirmatively market the Loan and Grant Programs and MCC Program to low-to-moderate income and minority communities throughout the City of San Diego.

4. **Information.** Lender shall make information regarding the Loan and Grant Programs and MCC Program available to potential borrowers. Lender shall give the borrower a complete Loan and Grant Programs information package and MCC Program information package at the time borrower applies for a Subordinate Loan. Lender shall process and review the application of any potential borrower in order to determine such person's eligibility under the Loan and Grant Programs and MCC Program. Lender shall use the forms created by the SDHC and package the loan applications in conformance with program guidelines.

5. **Applications.** Lender shall coordinate its first trust deed loan applications with the SDHC's processes and procedures and will obtain from the prospective borrower all documents and information required for the application for (and receipt of) a Subordinate Loan and MCC. The first trust deed loan must be a 30-year fixed rate loan if made in conjunction with a Subordinate Loan.

6. **Investigation and Verification.** Lender will perform all investigations and verifications that would normally be performed for underwriting a mortgage not provided in connection with a Subordinate Loan or MCC. Lender will notify the borrower and SDHC in writing of any decision to cancel processing for a Subordinate Loan or MCC. Lender will conduct such reasonable investigation as is necessary to certify that the applicant has satisfied the requirements of the applicable Loan and Grant Programs and MCC Program, including those imposed by temporary and permanent regulations issued pursuant to the Internal Revenue Code and the SDHC eligibility requirements.

7. **Documentation.** Lender shall submit complete loan application packages to SDHC in a timely manner. In addition, prior to release of SDHC funds, the lender will ensure the escrow agent has provided certified, executed and where required notarized, copies of the SDHC trust deed and declaration of covenants, conditions and restrictions, the original promissory note, evidence of insurance, and any other pertinent documents requested by SDHC, in accordance with SDHC's title and escrow instructions.

8. **Applicable Laws and Regulations.** Lender represents and warrants that it is familiar with (i) all provisions of state and federal laws applicable to mortgage origination and lending, (ii) all provisions of state and federal laws applicable to the Loan and Grant Programs and MCC Program, (iii) all temporary and permanent regulations applicable to the Loan and Grant Programs and MCC Program, and (iv) all guidelines established by SDHC with respect to the Loan and Grant Programs or MCC Program. Lender hereby agrees to comply, with all applicable federal and state laws, regulations and all guidelines established by SDHC. In addition, the Lender agrees to uphold the quality standards of the MCC Program and to meet its obligation as a signatory to the "Statement of MCC Quality Commitment."

9. Fees.

(a) **SDHC Fees.** Lender agrees to collect and forward application fees to the SDHC in the amounts shown on SDHC's website (www.sdhc.org).

(b) **Lender Fees.** Lender agrees that the maximum loan origination fee, discount points or compensation (whether paid to or charged by Lender or if Lender is a mortgage broker, the party making the loan) in connection with any loan made in conjunction with the Subordinate Loan and/or the Loan and Grant Programs, for the term of this Agreement, shall not exceed one and a half (1½) points (the "Maximum Fee"). The Lender will charge a potential borrower applying for an MCC only those reasonable fees as would be charged to a potential borrower applying for mortgages not provided in connection with an MCC. No additional fees relating to the Subordinate Loan or MCC may be charged by Lender, the escrow agent, party making the loan, or any other party. Lender may not charge a sub-fee for the processing, underwriting or funding of the Subordinate Loan. Lender will not receive a loan origination fee or compensation with respect to the Subordinate Loan or Loan and Grant Programs in excess of the Maximum Fee.

10. Information Regarding Misrepresentations. Lender hereby agrees to forward to SDHC any and all information Lender receives during the life of any Subordinate Loan or MCC, which indicates or tends to indicate that misrepresentations were made by any borrower in applying for a Subordinate Loan or MCC or that may affect the applicant's continued eligibility for the Subordinate Loan or MCC.

11. Fair Lending Requirements. Lender shall ensure that all lenders providing first mortgage loans shall abide by all Fair Housing and Lending requirements and agree to uphold the quality standards of the Loan and Grant Programs.

12. Term. This Agreement shall remain in full force and effect for a period of one (1) year from the date hereof. This Agreement may be renewed by SDHC before the date of expiration by written notice to Lender. Said notice shall be given thirty (30) days in advance of the expiration of the original term of this Agreement. Lender may terminate this Agreement, without cause, upon thirty (30) days written notice to SDHC. SDHC may immediately terminate this Agreement and prohibit Lender from participating in the Loan and Grant Programs and MCC Program upon Lender's failure to comply with the terms and conditions of this Agreement upon written notice by SDHC or by thirty (30) days written notice to Lender without cause. Notwithstanding any such termination, the Lender shall file any and all reports required to be filed with the Internal Revenue Service and shall maintain all records required to be maintained by it pursuant to Section 25 of the Internal Revenue Code of 1986 and any regulations hereunder. No amendments to this Agreement shall be effective unless in writing and signed by both parties hereto

13. Governmental Requirements Superior. All provisions of this Agreement and all other documents relating to the Subordinate Loans, Loan and Grant Programs and MCC Program shall be subject and subordinate to any and all applicable federal, state and local statutes, regulations and ordinances and shall be subject to modification to comply therewith.

14. Notices. Notices shall be deemed received: (i) on the date of personal delivery or facsimile transmission; (ii) the next business day following receipt by the courier if sent by FedEx (or other similar national overnight carrier); (iii) three (3) days from mailing if properly addressed and sent via certified mail, return-receipt requested, postage prepaid, provided such notice is mailed within California; or (iv) the seven (7) days from mailing if properly addressed and sent via certified mail, return receipt requested, postage prepaid, if such notice is mailed from outside of California. Notices shall be sent to the addresses for the parties hereto as set forth below or as changed by either party from time to time by written notice to the other party.

SDHC: SAN DIEGO HOUSING COMMISSION
ATTENTION: Loan Management
1122 Broadway, Suite 300
San Diego, CA 92101

LENDER: _____
ATTENTION: _____

15. Severability. If any provision of this Agreement is deemed to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect.

16. Equal Opportunity Programs. During the term of this Agreement, Lender shall comply with all equal opportunity programs as described in any and all applicable State, Federal and local laws, failure to comply with such equal opportunity programs shall subject Lender to the penalties provided by law. In addition, SDHC may, in its sole and absolute discretion, bar Lender from participating in SDHC programs for a period of not less than one (1) year.

17. Nonwaiver of SDHC's Rights. No right, remedy, or power of SDHC in this Agreement shall be deemed to have been waived by any act or conduct on the part of SDHC or by any failure to exercise or delay in exercising any right, remedy, or power. Every such right, remedy or power of SDHC shall continue in full force and effect until specifically waived or released by an instrument in writing executed by SDHC.

18. Entire Agreement. This Agreement, including any attachments, contains the entire understanding between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, between the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed and/or referred to herein.

19. Exhibits Incorporated. All exhibits referred to herein are hereby incorporated in this Agreement.

20. Interpretation of the Agreement. The provisions contained in this Agreement shall not be construed in favor of or against either party but shall be construed as if both parties contributed equally to its preparation. This Agreement shall be construed in accordance with the laws of the State of California.

21. SDHC's Reliance on Statements and Disclosures of Lender. SDHC has relied on each and every statement, representation and warranty of Lender contained herein, and all such statements, representation and warranties of Lender materially induced SDHC to enter into this Agreement. In the event Lender has made material misrepresentations or failed to disclose any material fact, such misrepresentation or omission shall be a breach of this Agreement.

22. SDHC Not Liable for Acts of Omissions of Lender or Others. SDHC shall not be liable for any acts or omissions of Lender, or any agent or contractor employed by Lender.

23. Time of the Essence. Time is of the essence of this Agreement and of each and every provision hereof. The waiver by SDHC of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach or breaches.

24. Assignment. Lender shall not assign its rights nor delegate its duties under this Agreement without the prior written consent of SDHC. Any attempted assignment or delegation in violation of this section shall be void. SDHC shall have full right and authority to assign all or a part of its rights and delegate all or a part of its duties under this Agreement without Lender consent.

25. Approvals, Consents and Other Determinations. Unless otherwise provided, in any approval, consent, or other determination by SDHC or Lender required under this Agreement shall act reasonably, in good faith and without delay.

26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

27. Signature Authority. All individuals signing this Agreement for a party which is a corporation, partnership, limited liability company or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the SDHC that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

28. Statement of MCC Quality Commitment. Lender understands that the SDHC has the right to set minimum quality standards for lender participation in the MCC Program, and that failure to meet these standards may result in cessation of Lender's participation. Lender will make every effort to prepare its personnel to participate in the program successfully, and to meet the following MCC Quality Work Standards:

(a) It is recommended that Lender personnel receive training in the MCC Program before being assigned to prepare MCC packages. For more information: contact Kathy Stone at AHA Housing at 619-469-0270.

(b) Lender shall designate an MCC Contact Person for each participating branch. The

contact Person's responsibilities include: (1) making Lender update letters (including attachments) available to all of Lender's MCC-related personnel in a timely manner; (2) notifying the SDHC of any re-assignment regarding their role as Contact Person.

(c) Lender obtains the SDHC's commitment to issue the MCC before funding the loan.

(d) Borrower's are treated fairly, receiving a full and accurate explanation about the MCC and the recapture tax. For questions which Lender cannot answer, the borrower is referred to the SDHC.

(e) A Notice of expiration of the *MCC Commitment* is to be responded to by the Lender in a timely manner, with payment of the \$175 late fee, and submittal of the necessary documentation to bring the delinquent file current or close it out.

Lender ensures Lender is aware of its obligations under the MCC program and is prepared to submit all necessary closing documentation in a timely manner.

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

NOTE: PLEASE SIGN THE FOLLOWING IN BLUE INK ONLY.

Company: _____
Please Check One: Broker ___ Lender: Retail ___ Wholesale ___
Address: _____
Telephone: _____
Fax: _____
E-Mail Address: _____

The annual renewal letter and year end IRS documents should be sent to me:
___ YES ___ NO, if no, designate an alternative contact below:

By: _____
(Authorized Signatory)
Print Name: _____

Designee for Annual Renewal and IRS Documents: SAN DIEGO HOUSING COMMISSION
Name: _____
Address: _____
Telephone: _____ By: _____
E-Mail Address: _____ Vicki Monce, Program Administrator

NOTE: A photocopy of your STATE OF CALIFORNIA, DEPT. OF CORPORATIONS LICENSE CERTIFICATE or DEPT. OF REAL ESTATE LICENSE CERTIFICATE and annual application fee of \$400 (check payable to San Diego Housing Commission) must accompany this agreement.

Attachment A

Include specific staff members that will be designated as SDHC lender participants. Staff members included on this list have been informed of their responsibilities to the SDHC Lender Participation Agreement, and agree to uphold their obligations as set forth in this lenders participation agreement.

Branch Address:

Primary Contact for this branch:

Phone Number: _____
Email Address: _____

Participating Loan Officers at this branch:

Name: _____
Phone: _____
Email: _____

Name: _____
Phone: _____
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Branch Address:

Primary Contact for this branch:

Phone Number: _____
Email Address: _____

Participating Loan Officers at this branch:

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Attachment A

(continued)

Branch Address:

Primary Contact for this branch:

Phone Number: _____
Email Address: _____

Participating Loan Officers at this branch:

Name: _____
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Branch Address:

Primary Contact for this branch:

Phone Number: _____
Email Address: _____

Participating Loan Officers at this branch:

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