



LENDER PARTICIPATION AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into on _____,
by and between the San Diego Housing Commission, a public agency, (“SDHC”), and
_____ (“Lender”).

This Agreement shall remain in full force and effect through _____.

RECITALS

A. SDHC administers several Deferred Loan and Closing Cost Assistance programs (collectively, the “Loan and Grant Programs”) which assist qualified individuals with the acquisition of new and existing single-family housing, condominiums, and manufactured homes by providing subordinate mortgage loans (the “Subordinate Loan” or “Subordinate Loans”) to such qualified individuals.

B. 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 in connection with first trust deed mortgage loans Lender will make available for the acquisition of new and existing single-family housing, condominiums, townhomes, and manufactured homes.

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.

2. **Employee Training.** Lender shall assign specific Loan Officers to the Loan and Grant Programs. Such Loan Officers shall have e-mail addresses and internet access which allows them to access SDHC’s website to receive updated information regarding the Loan and Grant Programs. Lender represents and warrants that any Loan Officer that works with borrowers or potential borrowers under the Loan and Grant Programs have attended the SDHC Lender Training, and are familiar with all applicable program guidelines, laws and regulations with regard to the Loan and Grant Programs and the documentation thereof. Loan Officers are required to attend SDHC Lender Training every three years. Support staff such as processors and underwriters are encouraged, but not required, to attend SDHC Lender Training.

3. **Lender Representations and Warranties.**

a. **Fitness and Qualification of Employees.** The Lender hereby represents and warrants to the SDHC that each and every employee and/or person that works on a matter under the terms of this Agreement is, at all times during the performance of the work, competent to render the services under this Agreement in a professional and competent manner. Lender further represents and warrants that each such person and/or employee has obtained, possesses and maintains, at all times during the performance of the work, any and all required licenses, certifications, registrations and or permits required under all applicable laws, rules and regulations to perform the work. Lender represents and warrants to SDHC that it is aware that the SDHC is relying upon such warranties and representations in entering into this Agreement and that the SDHC would not enter into this Agreement except for

these representations and warranties. Lender acknowledges that the purpose of this representations and warranties is to protect the interests of the public at large in dealing with the Lender and their designated employees/persons who perform the work. The purpose is also to hold the Lenders responsible for the work of their designated employees/persons.

b. Compliance with Rules and Regulations Affecting the Work. Lender represents and warrants to the SDHC that each and every person and/or employee working on matters under the terms of this Agreement shall comply with each and every program guideline, rule, law, regulation and ordinance affecting the work. Any failure to so comply shall be grounds to terminate this Agreement. The right to terminate this Agreement shall be in addition to and not in lieu of any and all other remedies available at law or in equity. Lender represents and warrants to SDHC that each loan officer assigned to work with the Loan and Grant Programs has received a copy of this Lender Participation Agreement.

4. Homebuyer Education. Lender shall ensure program applicants attend a homebuyer education course and pre-purchase housing counseling course with a homebuyer education provider on the SDHC approved list.

5. Affirmative Marketing, Fair Housing and Equal Housing Opportunity. Lender shall affirmatively market the program in a manner that complies with all applicable Fair Housing Act and Equal Housing Opportunity laws. Lender shall ensure the program reaches all eligible low-, moderate-, and middle-income communities in San Diego and fosters equal access to housing opportunities for all applicants. Lender shall ensure that its employees who are providing first mortgage loans abide by all Fair Housing Act and Equal Housing Opportunity requirements and agree to uphold the quality standards of the Loan and Grant 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.

6. Program Information. Lender shall make information regarding the Loan and Grant Programs available to potential borrowers. Lender shall meet with the borrower to discuss the SDHC Lender Borrower Disclosure Notice which explains the terms and conditions of the Loan and Grant Programs. Lender shall provide borrower with a complete copy of the Loan and Grant Programs application and disclosures at the time borrower applies for the First-Time Homebuyer program. Lender shall process and review the application of any potential borrower to determine such person's eligibility under the Loan and Grant Program Guidelines. Lender shall use the forms created by the SDHC (available at: <https://sdhc.org/housing-opportunities/first-time-homebuyers/participating-lenders/>) and submit the loan applications in conformance with program guidelines.

7. 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/or Grant. The first trust deed loan must be a 30-year fixed rate loan if made in conjunction with a Subordinate Loan. Lender shall submit application package to SDHC via the SDHC Lender Portal. Only Loan Officers who have attended the SDHC Lender Training will be provided log-in credentials to the SDHC Lender Portal.

8. 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. Lender will notify the borrower and SDHC in writing of any decision to cancel processing for a Subordinate Loan. Lender represents and warrants to the SDHC that Lender will conduct such reasonable investigation as is necessary to certify that the applicant has satisfied the eligibility requirements of the applicable Loan and Grant Programs a, including those imposed by temporary and permanent regulations issued pursuant to SDHC guidelines and eligibility requirements. SDHC will complete an independent investigation and verification of applications

submitted by lender, provided that the SDHC's independent investigation and verification of the submittal shall not release the Lender from liability for any fraud, misrepresentation or concealment of any information known by the Lender which would impact the determination of any applicant's eligibility.

9. 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 deed of trust and declaration of covenants, conditions and restrictions, the original promissory note, grant agreement, evidence of insurance, and any other pertinent documents requested by SDHC, in accordance with SDHC's title and escrow instructions.

10. 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, (iii) all temporary and permanent regulations applicable to the Loan and Grant Programs, and (iv) all guidelines established by SDHC with respect to the Loan and Grant Programs. Lender hereby agrees to comply, with all applicable federal and state laws, regulations and all program guidelines established by SDHC.

11. Fees.

(a) **SDHC Fees.** Lender agrees to collect and forward application fees to the SDHC in the amounts shown on SDHC's website (<https://sdhc.org/housing-opportunities/first-time-homebuyers/participating-lenders/>).

(b) **Lender Origination / Discount 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 two and a half (2 ½) percent origination and discount points combined with a maximum origination charge of one and one half (1½) percent (the "Maximum Fee"). No additional fees relating to the Subordinate Loan 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.

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

13. Penalties for Misrepresentation by Applicant or Lender / Loan Officer. Strict penalties may be imposed on any lender, loan officer or participating lender staff, making a material misstatement, misrepresentation or fraudulent act on documents, emails and/or as part of SDHC's lender portal application submitted to the Housing Commission. Any negligent material misstatement or misrepresentation in any application, affidavit, certification, or email made in connection with the application for the SDHC's programs may result in the imposition of a) civil liability on the lender, loan officer or their staff, including monetary damages, if SDHC suffers any loss because SDHC relied on any misrepresentation that was made on the application, and/or b) criminal penalties on the lender, loan officer or their staff including, but not limited to, fine or imprisonment or both under the provisions of Federal law (18 U.S.C. §§ 1001 et seq.). Any lender, loan officer found to have made a material misstatement, misrepresentation or fraudulent act on documents, emails and/or SDHC's lender portal submitted to the Housing Commission will be banned from applying for or working with SDHC programs.

20. **Exhibits Incorporated.** All exhibits referred to herein are hereby incorporated in this Agreement.
21. **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.
22. **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.
23. **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.
24. **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.
25. **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.
26. **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.
27. **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.
28. **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.

IN WITNESS WHEREOF, the parties have executed this Agreement on _____:

Company: _____

Please Check One: Broker Lender: Retail Wholesale Bank

Address: _____

Telephone: _____

E-Mail Address: _____

By: _____
(Authorized Signatory)

Print Name: _____

The annual renewal letter should be sent to:

Name: _____

Address: _____

Telephone: _____

E-Mail Address: _____

SAN DIEGO HOUSING COMMISSION

Carrie Tapia, Housing Programs Manager

INSTRUCTIONS

- 1) **E-mail** completed and signed Lender Participation Agreement, and State of California, Dept. of Corporations license certificate or Dept. of Real Estate License Certificate to FTHB@sdhc.org
- 2) **Mail** Annual Participation Fee (see accompanying email and/or invoice)
Payable to San Diego Housing Commission
Attention: First Time Homebuyer Program
1122 Broadway #300, San Diego, CA 92101
- 3) **Register** for the next Lender Training. Loan officers who are new to the SDHC First Time Homebuyer Program or who have not attended training in the last three years are required to attend training. For training information, send an e-mail to FTHB@sdhc.org.