

MINNESOTA HOUSING FINANCE AGENCY

PARTICIPATION AGREEMENT
FOR
MINNESOTA HOUSING
MORTGAGE CREDIT CERTIFICATE PROGRAM

THIS PARTICIPATION AGREEMENT is made between _____
_____ (the "Lender"), with its
principal office located at _____;
and the Minnesota Housing Finance Agency ("Minnesota Housing"), with its office located at
400 Sibley Street - Suite 300, St. Paul, Minnesota 55101-1998.

RECITALS:

- A. Minnesota Housing, under the provisions of Minnesota Statutes, Chapter 462A, as amended, and Section 25 of the Internal Revenue Code of 1986, as amended (the "Code"), is authorized to issue mortgage credit certificates ("MCCs") from time to time as a means of assisting qualified individuals with the acquisition of eligible new and existing single-family housing.
- B. An MCC reduces the amount of federal income tax a qualified homeowner pays by providing a non-refundable federal tax credit during the life of the mortgage loan, as long as the homeowner occupies the home as his or her principal residence. After all other credits and deductions are taken into account, the value of the MCC is applied directly to the homeowner's remaining federal income tax liability, if any. To be eligible for an MCC, an applicant and the purchase of the residence must meet the requirements of the Code and the regulations, including temporary regulations, promulgated thereunder (the "Regulations").
- C. In November 2012 Minnesota Housing elected to convert part of its authority to issue qualified tax exempt private activity bonds for authority to issue MCCs and in November 2014 Minnesota Housing elected to convert additional authority for that purpose. The program Minnesota Housing has established to issue MCCs includes this authority, which relates to mortgage loans that must be closed on or before December 31, 2016, and any additional authority for MCCs that Minnesota Housing obtains in the future (the "MCC Program").
- D. The Lender wishes to participate in the MCC Program.
- E. Minnesota Housing is willing to enter into this Participation Agreement (as it may be amended or supplemented from time to time in accordance with its terms, this "Participation Agreement") to permit the Lender to participate in the MCC Program, in

accordance with the terms and conditions set forth below and the provisions contained in the Minnesota Housing Mortgage Credit Certificate Program Procedural Manual (as it may be amended or supplemented from time to time by Minnesota Housing, the "Manual"), the provisions of which are hereby incorporated by reference herein as if set forth in their entirety, and the provisions of Section 25 of the Code and applicable Regulations.

NOW, THEREFORE, the parties agree as follows:

- 1. Participation under the MCC Program.** In accordance with the terms and conditions herein and those contained in the Manual, the Lender agrees to participate in the MCC Program. Subject to the terms, conditions and requirements contained in the Manual, Minnesota Housing agrees to issue MCCs relating to eligible mortgage loans originated by the Lender, to the extent issuance authority is available. The Lender acknowledges that this Participation Agreement does not reserve or commit any MCCs to mortgage loans made by the Lender.
- 2. Term.** The Lender understands that participation in the MCC Program under this Participation Agreement shall be permitted only after this Participation Agreement is effective which occurs once (i) the Lender submits an executed copy of this Participation Agreement together with the required participation fee, if applicable, to Minnesota Housing, (ii) Minnesota Housing has executed this Participation Agreement, and (iii) Minnesota Housing has returned a fully executed copy of this Participation Agreement to the Lender. After this Participation Agreement is effective, the Lender may begin making applications for MCCs provided the Lender fully complies with the terms of this Participation Agreement and the Manual. The Lender's participation in the MCC Program will terminate (i) upon the termination of the MCC Program by Minnesota Housing, or (ii) upon the termination of this Participation Agreement as authorized in the Manual or herein. The Lender shall notify Minnesota Housing in writing if it wishes to terminate its participation in the MCC Program. [Initially, the Lender is entitled to participate in the MCC Program for a time period to be established by Minnesota Housing, in its discretion; provided, however, such initial time period shall be a minimum of [ten] months. The length of any renewal time period shall be set by Minnesota Housing, at its discretion; provided, however, such renewal time period shall be a minimum of [ten] months.
- 3. Participation under other Programs.** If the Lender wishes to participate in other programs of Minnesota Housing, the Lender must submit the required applications and receive the necessary approvals and execute the applicable participation agreement. This Participation Agreement applies only to the MCC Program.
- 4. Participation Fee; Applicant Fee.** The Lender shall pay to Minnesota Housing the nonrefundable participation fee, if any, specified in the Manual to participate in the MCC Program along with and at the same time as delivery of an executed copy of this Participation Agreement, unless waived or modified in writing by Minnesota Housing.

The Lender shall collect from each applicant a nonrefundable application fee as specified in and if required by the Manual, which shall be forwarded to Minnesota Housing.

5. **Reservation Procedure.** The Lender shall accept and review applications for MCCs in strict accordance with the provisions and procedures specified in the Manual. If the application indicates that an applicant is eligible for an MCC, and if Lender has determined to make to the applicant a mortgage loan from its own funds (meeting the requirements set forth in the Manual), the Lender shall forward the MCC application in the manner set forth in the Manual. To the extent Minnesota Housing has MCC issuance authority available and the applicant is certified by the Lender to be eligible for an MCC, Minnesota Housing will assign the applicant an [MCC reservation number] for the period and upon the terms and conditions specified in the Manual.

The Lender acknowledges that, under the MCC Program, MCC issuance authority, other than as set forth in the Manual, shall be allocated by Minnesota Housing on a first-come, first-served basis among prospective applicants, provided that 20% of each allocation of issuance authority will be set aside during the first year for residences located in Targeted Areas, as more fully discussed in the Manual. The Lender further acknowledges that repayment of any mortgage loan made in conjunction with the MCC Program is the responsibility of the applicant and that payment of the mortgage loan does not constitute an indebtedness of Minnesota Housing or a charge against its general credit or other assets or the general credit or other assets of the State of Minnesota.

6. **Furnish Information.** The Lender shall make information regarding the MCC Program available to potential applicants.
7. **Obtain Documentation; Due Diligence; Charges.** The Lender will obtain from the applicant all documents and information required in connection with the application for and receipt of an MCC set forth in the Manual. The Lender will perform all investigation and verification that it would normally perform for underwriting a mortgage loan not provided in connection with an MCC. The Lender will conduct such reasonable investigation as is necessary to certify that the applicant has satisfied all requirements of the MCC Program, including those imposed by the Code and the Regulations and Minnesota Housing eligibility requirements.

Other than the application fee set forth in the Manual, the Lender may charge only those points, origination fees, servicing fees and other fees in amounts that are customarily charged with respect to loans not provided in connection with MCCs.

8. **Compliance with Laws and Program Requirements.** The Lender represents that it is familiar with the MCC Program as well as the laws of the State of Minnesota applicable to the MCC Program and the Manual. The Lender shall comply with all provisions of the Code, the Regulations, State law and applicable regulations and guidelines, including,

but not limited to, the Manual, as such apply to the MCC Program. The Lender acknowledges that Minnesota Housing may revise, amend or otherwise change the Manual at any time solely in the discretion of the Issuer, with or without notice to the Lender.

- 9. Data; Record Retention; Reporting.** The Lender shall comply with all data, record retention and reporting requirements applicable to it under the MCC Program, the Code, the Regulations, state law and the Manual, including, without limitation, Section 1.25-8T(a)(3) of the Regulations. The Lender shall file annually with the Internal Revenue Service for all MCCs issued in a calendar year the Lender's Information Return for Mortgage Credit Certificates (MCCs) (IRS Form 8329), which will be provided by Minnesota Housing.
- 10. Inspection.** The Lender grants Minnesota Housing and its agents authority to examine and inspect all books and records in the Lender's possession relating to any MCC and the MCC Program. The Lender grants Minnesota Housing and its agents access to such books and records during normal business hours upon Minnesota Housing's request.
- 11. Termination.** This Participation Agreement shall remain in full force and effect until terminated as provided herein. The Lender or Minnesota Housing may terminate this Participation Agreement, without cause, upon 60 days' written notice to the other. Further, Minnesota Housing may immediately terminate this Agreement and prohibit the Lender from participating in the MCC Program upon failure of the Lender to comply with the terms and conditions of this Participation Agreement or the Manual upon written notice by Minnesota Housing. 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 Code and the Regulations.
- 12. Representations.** The Lender has reviewed and is familiar with the Manual and affirms that the representations and warranties of Lender contained therein are true and complete as of the date hereof and will be true and complete in all material respects so long as Lender is a participant in the MCC Program. The Lender represents that all MCC Program information provided regarding any borrower's eligibility under the MCC Program (i) will be provided in good faith, (ii) will be accurate to the best of its knowledge, and (iii) will be the result of standard due diligence on the part of the Lender.
- 13. Evidence of Noncompliance.** The Lender shall immediately forward to Minnesota Housing or its authorized representatives all information that it receives during the life of the mortgage loan that in any way indicates that the borrower may have made a misrepresentation in applying for an MCC or that may affect the borrower's continued eligibility for an MCC. The Lender shall cooperate with Minnesota Housing and its authorized representatives in revoking an MCC if it is determined by Minnesota Housing or its authorized representatives that such revocation is necessary.

- 14. Program Term.** Minnesota Housing's commitment to issue MCCs under the MCC Program shall apply to loans closed prior to December 31, 2016 (but only to the extent Minnesota Housing has not exceeded the applicable MCC volume limitations), unless Minnesota Housing notifies the lender of a program extension.
- 15. Mortgage Loan Requirements.** The mortgage loan to be originated by the Lender to which an MCC relates shall conform to the requirements set forth from time to time in the Manual, or such other notice as may be prescribed in the Manual.
- 16. Remedies; Revocation of MCC.** In the event that the Lender fails to observe or perform any covenant or condition in this Participation Agreement or the Manual, or in the event that any warranty or representation made by the Lender under this Participation Agreement is determined by Minnesota Housing to be untrue, then Minnesota Housing shall be entitled to all remedies, at law or in equity, including but not limited to: (i) the right to rescind acceptance of this Participation Agreement; (ii) the right to seek equitable relief by way of injunction (mandatory or prohibitory) to prevent the breach or threatened breach of any of the provisions of this Participation Agreement, or to enforce the performance thereof; and (iv) the right to terminate this Participation Agreement; provided, however, that such termination shall not diminish the rights of Minnesota Housing specified herein or in the Manual.

The Lender acknowledges that Minnesota Housing may be required under the Code and Regulations to revoke an MCC in certain circumstances, as further described in the Manual.

- 17. Contract Documents.** All transactions between the Lender and Minnesota Housing pursuant to this Participation Agreement are on a contractual basis, the contract in each instance consisting of: (i) this Participation Agreement, and (ii) the provisions and requirements of the Manual, with all amendments and supplements thereto.
- 18. Indemnification.** The Lender shall protect, indemnify, and hold harmless Minnesota Housing and its members, officers, employees and agents (the "Indemnified Parties") from, and in respect of, any and all losses, liabilities, reasonable costs, and expenses (including attorneys' fees) that may be incurred by the Indemnified Parties with respect to, or proximately resulting from, any breach of, any representation or covenant of the Lender hereunder. The Lender shall indemnify and hold harmless the Indemnified Parties from any claim, loss or other damage, including reasonable attorneys' fees, resulting in whole or in part from act or omission by the Lender, its agents and employees, including but not limited to failure to comply with applicable state, federal and local statutes or regulations. To the extent the Lender, its agents or employees, commits an actual wrong, or makes some error or omission in the preparation of any its documents and as a result thereof, and based thereon, any Indemnified Party commits an act or omission for which it becomes liable to the borrower or any third party and/or a claim or cause of action is instituted against an Indemnified Party, the Lender shall

indemnify and hold harmless the Indemnified Parties from any such loss or damage, including reasonable attorneys' fees, resulting therefrom.

- 19. Notices.** All notices required or authorized to be sent to the parties to this Participation Agreement, shall be addressed as follows:

To the Lender:

To Minnesota Housing:

Minnesota Housing Finance Agency
Attn: MN Homes Division Mortgage Programs
400 Sibley Street, Suite 300
Saint Paul, MN 55101-1998

- 20. Publicity.** Any publicity given to the MCC Program and all publications, advertising, or services provided in accordance with this Participation Agreement, including, but not limited to, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Lender or its employees individually or jointly with others, or any subcontractors shall clearly and expressly identify Minnesota Housing as the source of the MCCs.
- 21. Waiver.** Neither the failure by any party hereto in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of any party hereto to exercise any right, privilege, or remedy conferred hereunder or afforded by law, shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege or remedy thereafter.
- 22. Governing Law and Venue.** This Participation Agreement is made and entered into in the State of Minnesota, and shall be construed and interpreted in accordance with the laws of such state (without giving effect to conflicts-of-laws principles thereof). The parties agree and consent that any litigation that may be initiated with respect to any action arising under by this Participation Agreement shall be initiated and venued, through completion thereof, exclusively in the State District Court in and for the County of Ramsey, State of Minnesota.
- 23. Severability.** If any term or provision of this Participation Agreement is finally judged by any court of competent jurisdiction to be invalid or unenforceable, the remaining terms and provisions contained herein shall remain in full force and effect, and they shall be interpreted, performed, and enforced as if said invalid provision did not appear herein.
- 24. Successors and Assigns.** This Participation Agreement may not be assigned, in whole or in part, by the Lender without the written consent of Minnesota Housing. In addition, this Participation Agreement shall fully bind and inure to all permitted successors or

assigns of any party hereto as if it had been originally executed by such successor and/or assign.

- 25. Protection of Data.** Each party agrees to protect all data including, but not limited to, private or confidential data in accordance with the requirements of the Minnesota Data Practices Act (Minn. Stat. ch. 13). Lender agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to its violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of this Agreement. In the event Lender subcontracts any or all of the work to be performed under this Agreement, Lender shall impose this requirement on all subcontractors and also retain responsibility under the terms of this paragraph for such work.

IN WITNESS WHEREOF, each party has caused this Participation Agreement to be executed by its duly authorized officer or officers.

LENDER

By: _____
(Signature of Authorized Officer)

(Printed or Typewritten Name of Authorized Officer)

Its: _____

Date: _____

(Include Additional Signature Below if Required by the Lender's Bylaws)

By: _____

Its: _____

Date: _____

MINNESOTA HOUSING FINANCE AGENCY

By: _____
Its Assistant Commissioner

Date: _____