

MINNESOTA HOUSING FINANCE AGENCY

**PARTICIPATION AGREEMENT
For
MHFA HOME IMPROVEMENT LOAN PROGRAMS**

THIS PARTICIPATION AGREEMENT is made and entered into by and between

(herein referred to as the "Seller"), with its office located at

and the Minnesota Housing Finance Agency (herein referred to as "MHFA"), with its office located at 400 Sibley Street - Suite 300, St. Paul, Minnesota 55101-1998.

RECITALS:

- A. WHEREAS**, under the provisions of Chapter 462A of Minnesota Statutes, MHFA is authorized to enter into commitments for the purchase of home improvement loans (hereinafter referred to as the "Loans") for the improvement of residential property for households meeting MHFA's loan eligibility requirements; and
- B. WHEREAS**, Seller wishes to participate in MHFA Home Improvement Loan Programs designated as the Fix-up Fund ("FUF") and Community Fix-up Fund ("CFUF"), (hereinafter collectively referred to as the "Programs"); and
- C. WHEREAS**, MHFA is willing to enter into this Participation Agreement (hereinafter referred to as the "Participation Agreement") to allow Seller to participate in the Programs, in accordance with the terms and conditions set forth below and the provisions contained in MHFA Fix-up Fund Procedural Manual (hereinafter referred to as the "Manual"), the provisions of which are hereby incorporated by reference herein as if set forth in their entirety.

NOW, THEREFORE, the parties agree as follows:

- 1. Participation Under FUF.** In accordance with the terms and conditions herein and those contained in the Manual, Seller agrees to participate in FUF and, subject to the terms, conditions and requirements contained in the Manual, MHFA agrees to commit to purchase qualified Loans from Seller. Seller understands and agrees that this Participation Agreement does not reserve or commit any monies to Seller for the purchase of any Loans under FUF.

- 2. FUF Participation Term.** Seller understands that participation in FUF under this Participation Agreement shall be permitted only after this Participation Agreement is effective which occurs once (i) Seller submits a fully executed copy of this Participation Agreement together with the required Participation Fee to MHFA and (ii) MHFA executes this Participation Agreement. After this Participation Agreement is effective, Seller may begin making loans provided Seller fully complies with the terms of this Participation Agreement and the Manual. Seller's participation in FUF will terminate (i) upon the termination of FUF by MHFA, or (ii) upon the termination of this Participation Agreement as authorized in the Manual, or (iii) failure of Seller to remit the required renewal fee. Seller agrees to notify MHFA in writing if it wishes to terminate its participation in FUF. Initially, Seller is obligated to participate in FUF for a time period to be established by MHFA, in its discretion; provided, however, such initial time period shall be a minimum of ten (10) months. The length of any renewal time period shall be set by MHFA, at its discretion; provided, however, such renewal time period shall be a minimum of ten (10) months.
- 3. Participation Under CFUF and Other Home Improvement Loan Programs.** If Seller wishes to participate in additional MHFA Home Improvement Loan Programs, other than FUF, Seller must submit the required applications and receive the necessary approvals. If approved, Seller understands and agrees that (i) this Participation Agreement shall also apply to, and govern, Seller's participation in those other programs, and (ii) the Manual contain requirements applicable to those other programs.
- 4. Participation Term for CFUF and Other Home Improvement Loan Programs.** Seller understands that participation in additional MHFA Home Improvement Loan Programs, other than FUF, under this Participation Agreement shall be effective only after Seller receives the necessary MHFA approval and complies with all other requirements. Seller's participation in another program will terminate upon (i) termination of the program, or (ii) termination of this Participation Agreement as provided in the Manual, or (iii) failure of the Seller to remit the renewal fee required under this Participation Agreement. Seller agrees to notify MHFA in writing if it wishes to terminate its participation in a specific program.
- 5. Original and Renewal Fees.** Seller shall pay the following amounts to participate in the Programs:

 - a) Unless waived or modified in writing by MHFA, Seller agrees to transmit to MHFA, along with and at the same time as delivery of an executed copy of this Participation Agreement, the required nonrefundable participation fee.
 - b) Prior to the expiration of any time period during which Seller is authorized to participate in the Programs, MHFA shall notify Seller in

writing of the amount of a renewal fee which Seller must pay to MHFA in order for Seller to continue participating in the Programs.

6. **Commitment Procedure.** Seller shall submit Loans to MHFA for purchase in strict accordance with the provisions and procedures specified in the Manual.
7. **Commitment Term.** MHFA's commitment to purchase qualified Loans from Seller shall begin on the date specified in the Manual, and be continue for the period and in the manner specified in the Manual.
8. **Purchase Price of Loans.** The purchase price of each Loan to be purchased by MHFA hereunder shall be as set forth in the Manual.
9. **Loan Terms.** The annual interest rate on each Loan to be purchased by MHFA hereunder shall be as set forth in the Manual, or such other notice as may be prescribed in the Manual.
10. **Seller's Warranties.** Seller's warranties, as set forth in the Manual, shall be applicable to each and every Loan sold to MHFA by Seller.
11. **Servicing.** The servicing of each Loan purchased by MHFA shall be the sole responsibility of MHFA, or of those servicing institutions which MHFA may designate, in its sole discretion.
12. **Remedies.** In the event that Seller fails to observe or perform any covenant or condition under this Participation Agreement or the Manual, or in the event that any warranty made by Seller is determined by MHFA to be untrue, then MHFA shall be entitled to all remedies, at law or in equity, including but not limited to: (i) the right to tender Loans to Seller for repurchase as set forth in the Manual; (ii) the right to rescind acceptance of this Participation Agreement; (iii) 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; (iv) the right to seek damages, including consequential damages, arising by virtue of MHFA's sale of its debt securities in reliance on Seller's performance of the provisions of this Participation Agreement; and (v) the right to terminate this Participation Agreement, provided, however, that such termination shall not diminish MHFA's rights specified in the Manual. All such remedies shall be cumulative, and the exercise by MHFA of any one or more of them shall not in anyway alter or diminish MHFA's right to any other remedy provided herein or by law. Seller acknowledges that MHFA may not become aware of a default hereunder by Seller until a substantial period of time after such default has occurred and related Loan(s) have been submitted to and purchased by MHFA, and Seller agrees that any such delay shall not be grounds for a claim of laches.

- 13. Contract Documents.** All transactions between Seller and MHFA pursuant to this Participation Agreement are on a contractual basis, the contract in each instance consisting of: (i) this Participation Agreement, (ii) the provisions and requirements of the Manual, with all amendments and supplements thereto, and (iii) any applicable servicing agreements.
- 14. SFMOS Security.** Seller represents and warrants that it has the facilities, personnel and the capability to administer mortgage loan origination, application and qualification with respect to Mortgage Loans made pursuant to the MHFA Single Family Mortgage Online System ("SFMOS"). Seller further represents and warrants that is currently has, or will have, and will maintain the necessary internet connection to the World Wide Web and such other facilities and equipment as necessary to fulfill its obligations under this Participation Agreement. Seller agrees to safeguard and maintain the security of all facilities, passwords, access codes, firewalls and other equipment and features that limit or provide access to the SFMOS and data, files and documents contained therein by following MHFA policies, procedures and directives relating thereto including, but not limited to, providing access only to those employees necessary to have such access and training those employees in the appropriate security measures and procedures. Seller agrees to designate a SFMOS Administrator. The SFMOS Administrator maintain SFMOS system privileges to all users within the Seller's organization including all user login names, passwords, and branch information. Additionally, the SFMOS Administrator will be the first point of contact within Seller's organization regarding access or login questions, and is responsible to receive all MHFA communications regarding MHFA Programs. If Seller finds it necessary to designate a new SFMOS Administrator, Seller shall submit the request in strict accordance with the provisions and procedures specified in the Manual.
- 15. Interim SFMOS Procedures.** The implementation of the SFMOS will involve several phases of Seller participation. MHFA will provide information to Seller in the "Instructions for Interim Procedures" (Attached hereto as "Exhibit A" and incorporated herein by reference) describing the course of action required for the interim processes. Seller agrees to strictly follow the interim processes detailed in Exhibit A.
- 16. Notice.** All notices required or authorized to be sent to the parties to this Participation Agreement, shall be addressed as follows:

To the Seller;

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

- 17. Publicity.** Any publicity given to the 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 Seller or its employees individually or jointly with others, or any subcontractors shall clearly and expressly identify MHFA as the funding source.
- 18. Affirmative Action Requirements.** Seller hereby certifies that it is in full compliance with the affirmative action requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. Seller acknowledges that such consequences for Seller's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner of Human Rights ("Commissioner"), refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Participation Agreement by the Commissioner or MHFA.
- 19. Waiver.** Neither the failure by either 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 either 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.
- 20. 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. 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, in the State District Court in and for the County of Ramsey, State of Minnesota.
- 21. 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.

- 22. Successors and Assigns.** This Participation Agreement may not be assigned, in whole or in part, by Seller without the written consent of MHFA. In addition, this Participation Agreement shall fully bind and inure to all successors and/or assigns of any party hereto as if it had been originally executed by such successor and/or assign.
- 23. Termination of Prior Participation Application and Note Purchase Agreements.** Seller and MHFA mutually agree that this Participation Agreement is intended to replace any and all prior Participation Application and Note Purchase Agreements. Both parties agree that all prior Participation Application and Note Purchase Agreements are hereby terminated and are no longer valid as of the effective date of this Participation Agreement as set forth in Paragraph 2 hereinabove.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.)

SELLER

By: _____
(Signature of Authorized Officer)

(Printed or Typewritten Name of Authorized Officer)

Its: _____

Date: _____

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

By: _____

Its: _____

Date: _____

MINNESOTA HOUSING FINANCE AGENCY

By: _____

Its: _____

Date: _____