

VIRGINIA HOUSING DEVELOPMENT AUTHORITY  
PARTICIPATION AGREEMENT

FOR LENDERS WHO ARE APPROVED TO BE PARTICIPATING LENDERS  
UNDER A VIRGINIA HOUSING DEVELOPMENT AUTHORITY  
MORTGAGE CREDIT CERTIFICATE PROGRAM

THIS AGREEMENT made and entered into as of \_\_\_\_\_, 2015, by and between the Virginia Housing Development Authority, a political subdivision of the Commonwealth of Virginia, (hereinafter referred to as the "Authority" or "VHDA") and \_\_\_\_\_  
(hereinafter referred to as the "Participating Lender").

Whereas, VHDA has elected to issue Mortgage Credit Certificates pursuant to Internal Revenue Code Section 25(c)(2)(A)(ii) and Section 1.25-4T(c) of the Temporary Regulations regarding Mortgage Credit Certificates. VHDA was duly created and validly exists under and by virtue of the Constitution and laws of the Commonwealth of Virginia. VHDA has the full legal right, power and authority to issue Mortgage Credit Certificates to the extent permitted by the Internal Revenue Code and the process by which VHDA does so is referred to herein as the MCC Program,

Whereas, The Participating Lender wishes to participate in the MCC Program in connection with mortgage loans it will make (whether or not those mortgage loans may be sold to VHDA) for the acquisition of single family housing in Virginia, and

Whereas, the materials the Participating Lender must read or learn and the contact information for the people the Participating Lender must contact are available at [vhda.com](http://vhda.com).

NOW, THEREFORE, in consideration of the promises set forth herein, the parties agree as follows:

**Participating Lender Representations**

1. The Participating Lender represents and warrants to, and covenants with, VHDA that:

(a) The Participating Lender is duly organized, validly existing, and in good standing under the laws governing its creation and existence, is duly authorized and qualified to do in the Commonwealth of Virginia any and all business contemplated by this Agreement.

(b) The Participating Lender possesses all requisite authority, power, licenses, permits and franchises to conduct its business and to execute, deliver and comply with its obligations under the terms of this Agreement, and to the execution, delivery, and performance of which have been duly authorized by all necessary action.

(c) Neither the execution and delivery of this Agreement by the Participating Lender nor the performance and compliance with the terms hereof by the Participating Lender will violate any laws or pre-existing contracts that could have any material adverse effect whatsoever upon the validity, performance, or enforceability of any of the terms of this Agreement applicable to the Participating Lender.

(d) The Participating Lender has at least one office physically located in the Commonwealth of Virginia to which the general public may make loan application and at which the Participating Lender has originated loans for a period of not less than 12 months (unless VHDA agrees in writing to a lesser amount of time on the grounds that the Participating Lender's staff, located at the Virginia office in question, have significant experience originating VHDA mortgage loans.

(e) The Participating Lender's employees and management who will be involved in the origination of MCCs are not on the GSA Exclusionary List, the HUD LDP List, or any successor to either of those lists.

### **Participating Lender Fees**

2. For lenders that are not approved by VHDA to sell mortgage loans to VHDA ("VHDA Approved Lenders"), a non-refundable Participation Fee of \$3,200 will be required to participate in the MCC Program. This fee should be remitted along with the completed Participation Agreement. Checks should be payable to the Virginia Housing Development Authority. You may contact VHDA's Business Partner Product Manager to make arrangements to wire the Participation Fee. Please send completed Participation Agreement and Participation Fee to VHDA's Business Partner Product Manager.

### **Participating Lender Responsibilities**

3. The Authority hereby appoints the Participating Lender as one of its agents for receipt and processing of applications for MCC's under the MCC Program, however this agency is only in effect until such time as VHDA declares the MCC Program to be terminated and this agency specifically does not extend to approving applications or issuing MCCs which can only be done by VHDA. Each representative of the Participating Lender who will

originate and process MCC applications shall, before doing so, (a) be trained to originate MCCs by completing all required VHDA-approved training and (b) read VHDA's Fair Housing Policy.

4. The Participating Lender will make information regarding the MCC Program available to potential borrowers. The Participating Lender will process and review the application of any potential borrower in order to determine eligibility for the MCC Program.

5. The Participating Lender will (a) obtain from the borrower all documents and information required for the borrower's application for an MCC and deliver them to VHDA in accordance with the MCC Program Guide and (b) conduct such reasonable investigation as is necessary to certify that the borrower has satisfied all eligibility requirements of the MCC Program as described by the VHDA MCC Program Guide.

6. The Participating Lender shall fund all mortgage loans for which it originates an MCC application. No MCC Commitment will be issued to an entity other than the lender making the mortgage loan with respect to which the MCC Commitment is issued.

7. The Participating Lender will schedule the closing on the financing related to the MCC in accordance with the MCC Program Guide and the MCC Commitment. The closing cannot happen prior to the issuance of the MCC Commitment.

8. The Participating Lender hereby agrees to comply with all provisions of the Internal Revenue Code, Virginia law, and applicable regulations in addition to VHDA's MCC Program Guide, including, but not limited to, filing IRS Form 8329. Filing IRS Form 8329 correctly is the responsibility of the Participating Lender.

9. The Participating Lender hereby agrees to comply with the MCC Program Guide currently in effect or that may become effective in the future. The Lender hereby acknowledges its receipt of the MCC Program Guide, and the Lender hereby covenants and agrees to originate Mortgage Loans for which MCC's are issued in accordance with this Agreement and the MCC Program Guide. Failure by the Lender to perform its obligations under this Agreement and the MCC Program Guide may result in a suspension or termination of its participation in the MCC Program.

### **Borrower Fees**

10. The Participating Lender may charge a potential Borrower applying for an MCC a separate fee for processing the MCC application provided that fee is not more than \$250 and provided that fee does not violate any other law or regulation.

11. For MCC Commitments issued with respect to mortgage loans that will not be purchased by VHDA, the MCC Commitment will require a \$750 fee be paid to VHDA prior to the issuance of the MCC to the borrower. The Participating Lender will remit to VHDA such \$750 fee at closing. While not required, the Participating Lender can elect to collect some or all of this fee (not to exceed \$750) from the borrower provided doing so does not violate any other law or regulation.

12. If the Participating Lender closes on the related financing before VHDA issues an MCC Commitment for it, the Participating Lender will (a) inform its borrower VHDA will not issue him an MCC and (b) refund to its borrower any fees collected in connection with the MCC application. Whenever the Participating Lender learns that for any reason an MCC application cannot or will not be approved by VHDA and will not result in an MCC commitment, the Participating Lender must inform its borrower and VHDA the application is canceled and refund to its borrower all fees collected in connection with the MCC application.

### **Additional Agreements**

13. The Participating Lender hereby agrees that the Authority and its agents have the authority to examine and inspect all books and records in the Participating Lender's possession relating to any MCC and the MCC Program in general. The Participating Lender hereby agrees to grant the Authority and its agents access to such books and records during normal business hours upon Authority request.

14. The Participating Lender hereby agrees that it will immediately forward to VHDA all information which it may receive during the life of the mortgage loan which would indicate that the Borrower may have made a misrepresentation in applying for an MCC, or other conditions that may affect the Borrower's initial or continued eligibility for an MCC.

15. The Participating Lender shall do every act and thing that may be necessary or required to perform its duties under this Agreement, the MCC Program Guide and all other MCC Program Documents. In all respects, the Participating Lender shall obey the laws and applicable regulations of the United States and of Virginia pertaining to mortgage lending.

16. The compliance review of an MCC by VHDA shall not relieve the Participating Lender of any responsibility or liability for the performance or non-performance of any

obligation under this Agreement, the Participating Lender Agreement or any other MCC Program Document.

17. The Participating Lender will comply with the non-discrimination laws of the United States and of the Commonwealth of Virginia, including, but not limited to, the Civil Rights Act of 1965, as well as VHDA's Fair Housing Policy.

18. The Participating Lender shall indemnify and hold harmless VHDA and its officers, board of commissioners, and employees against all liability incurred by VHDA for any and all claims, causes of action, costs, and expenses (including attorneys' fees), judgments, fines, and penalties that may be related to or arise out of any violation of law or breach of this Agreement resulting from an act or omission of the Participating Lender hereunder.

### **Term**

19. The Participating Lender may terminate this Agreement, without cause, upon sixty (60) days written notice to VHDA but must first finish processing any applications for an MCC it has started. Further, VHDA may immediately terminate this Agreement and prohibit the Participating Lender from participation in the MCC Program upon the Participating Lender's failure to comply with the terms and conditions of this Agreement and upon written notice from the Authority. No amendment to this Agreement shall be effective unless in writing and signed by both parties hereto.

20. The Participating Lender must originate no fewer than 10 MCC applications that result in issued MCC Commitments during the first twelve months of this Agreement to avoid this Agreement terminating automatically at the end of the first year. Thereafter, the Participating Lender must originate no fewer than 10 MCC applications that result in issued MCC Commitments during each successive 12 month period to avoid this Agreement terminating automatically at the end of the then current 12 month period.

21. To avoid this Agreement automatically terminating at the end of the then current 12 month period, the Participating Lender must provide prompt written notice to VHDA's Business Partner Product Manager of any major organizational changes contemplated including, but not limited to: (a) resignation or replacement of senior management personnel, (b) merger, acquisition, name change, or entity conversion of the business, (c) resignation or replacement of VHDA delegated staff, including the Participating Lender's representatives who are originating MCCs, (d) material change in financial position, and (e) opening or closing of branches that originate MCCs.

22. To avoid this Agreement automatically terminating at the end of the then current 12 month period, Participating Lenders must maintain compliance with VHDA policies, procedures, rules and regulations as stated in the MCC Program Guide and subsequent notifications and must comply with all terms and conditions contained in this Agreement.

23. To avoid this Agreement automatically terminating at the end of the then current 12 month period, Participating Lenders must originate and submit MCC documentation in compliance with program guidelines.

24. Sections 12, 13, 14, 16, 17, 18 and 19 shall survive the termination of this Agreement.

25. The parties shall give notice to each other as and when need pursuant to this Agreement pursuant to the requirements of the MCC Program Guide.

THIS AGREEMENT is entered into as of the day and year written above.

\_\_\_\_\_  
(PARTICIPATING LENDER)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Title: \_\_\_\_\_