NEW HAMPSHIRE HOUSING FINANCE AUTHORITY
MORTGAGE CREDIT CERTIFICATE PROGRAM

PARTICIPATING MCC LENDER AGREEMENT

This “Agreement” is between New Hampshire Housing Finance Authority, 32 Constitution Drive, Bedford, New Hampshire (the Authority) and the lending institution named below (Lender). Unless otherwise defined in this Agreement, capitalized terms in this Agreement shall be as defined in the Authority’s MCC Rules.

______________________________________________
Name of Lender

______________________________________________
Street Address

______________________________________________
State                                          Zip

RECITALS

(A) The Authority has created the Mortgage Credit Certificate Program (MCC Program), in accordance with: 1) Section 25 of the Internal Revenue Code of 1986, as amended (the Code); 2) the Authority’s MCC Rules, HFA 328; 3) the Specific MCC Program Guide(s); and 4) the MCC Program Guidelines.

(B) Lender wishes to participate in the MCC Program as a Participating MCC Lender to: 1) assist the Authority in marketing, taking applications and prequalifying Eligible Borrowers for MCCs; and 2) provide the Underlying Mortgage to Eligible Borrowers.

PROVISIONS

THEREFORE, in consideration of the promises in this Agreement and for acknowledged consideration, the parties agree as follows.

Section 1 - Participating MCC Lender:

Pursuant to this Agreement and in accordance with all MCC Program Guidelines, the Authority authorizes Lender to participate in the MCC Program as a Participating MCC Lender. The Authority shall list Lender as a Participating MCC Lender on its website. Simultaneously with its execution and delivery of this Agreement, Lender shall pay to the Authority any fee required to be a Participating MCC Lender.
Section 2 - Authority:

Lender has, and its officers acting on its behalf have, full legal authority to execute this Agreement and to carry out all provisions of this Agreement.

Section 3 - MCC Program Guidelines and Requirements:

Lender warrants that it is familiar with and shall comply strictly with:

- The MCC Program Guidelines, which include all MCC requirements in the IRS Code, IRS regulations, the MCC Rules and all Authority created documents for the MCC Program, including the “MCC Program Manual”; and
- All New Hampshire or Federal laws or regulations that apply to the Participating Lender’s actions as a Participating MCC Lender.

All MCC Program Guidelines are incorporated in this Agreement, including the IRS Code, IRS regulations, the MCC Rules, any Specific MCC Guide and the MCC Program Manual.

In originating Underlying Mortgages and processing applications for MCCs, Lender shall comply with all nondiscrimination provisions in New Hampshire law and Federal law.

Section 4 - Amendments to MCC Program Guidelines and MCC Program Manual:

Lender shall comply with any amendments to the law governing the MCC Program.

The Authority may, in its sole and absolute discretion, amend the MCC Program Guidelines and the MCC Program Manual. Lender shall be bound to follow such amendments once the Authority sends written notice to Lender of such amendments.

Section 5 - Marketing:

Lender shall provide MCC Program information to all potential Eligible Borrowers.

Lender may provide the Underlying Mortgage, but Lender cannot require an Eligible Borrower to finance with Lender. Lender understands that an Eligible Borrower may obtain their Underlying Mortgage from any lender that the Eligible Borrower so chooses.

Section 6 - No Representations Concerning MCCs; Disclaimer:

In connection with the MCC Program, the Authority makes no promise, no representation and no warranty to any party, including any homebuyer or any lender. Specifically, the Authority makes no promise, no representation and no warranty about the actual benefit an MCC might provide to a specific homebuyer. Each homebuyer’s situation is different, and homebuyers should not rely on any material from or communication with the Authority or with a lender. Homebuyers should first become fully informed about the MCC Program, and then, with their own tax advisor, the homebuyer should decide if an MCC provides any benefit.
In working with MCC applicants Lender shall:

(A) Comply with this disclaimer by not making representations to applicants; and
(B) Inform all MCC applicants that no representations are being made.

Should an MCC applicant or MCC holder assert any claim or action based on Lender’s statements or representations concerning the value of an MCC, Section 14 of this Agreement (Indemnity and Hold Harmless) shall apply.

Section 7 - MCC Application Processing:

Lender shall obtain from MCC applicants all documents and information required by the MCC Program Manual. Lender will conduct such reasonable investigation as is necessary to certify that MCC applicants have satisfied all requirements of the MCC Program.

Section 8 - Underlying Mortgage:

Lender shall make its own independent decision concerning the Eligible Borrower’s qualification and creditworthiness for the Underlying Mortgage.

Lender shall make its own independent decision about if and how the MCC should be considered in underwriting the Underlying Mortgage.

The Eligible Borrower is solely obligated to pay the Underlying Mortgage. The Authority makes no promises, whatsoever, to Lender or to the Eligible Borrower related to the Underlying Mortgage.

If the Underlying Mortgage is being sold to the Authority:

(A) Lender shall comply with all Authority loan-program requirements;
(B) Nothing in this Agreement or in the MCC Program modifies any Authority loan-program requirement; and
(C) No loan-program deadline shall be extended by any MCC timelines/deadlines;

SECTION 9 - Representations, Warranties and Covenants of Originator Concerning Mortgages:

Lender agrees and warrants that:

(A) It will make a good-faith effort to ensure the information in each document submitted to the Authority, whether from Lender or MCC applicant, is true and correct;
(B) Each MCC and Underlying Loan will satisfy all applicable MCC Program requirements; and
(C) It will comply with all applicable disclosures required by the Real Estate Settlement Procedures Act, the Truth-in-Lending Act, and the Consumer Credit Protection Act and all other applicable State and Federal laws and regulations.
SECTION 10 - Defective Documents and Non-qualifying Mortgages:

If Lender discovers that:

(A) Any document associated with an MCC package is incorrect in any material respect;
(B) Any Underlying Loan is or becomes not eligible under the MCC Program Guidelines; or
(C) There is a breach of or a misrepresentation of any of the representations, covenants and warranties:

Then Lender shall immediately notify the Authority, and Lender shall seek to cure the defect or breach within thirty (30) days from discovery (the “Cure Period”). If any MCC or Underlying Loan cannot be cured within the Cure Period, Lender shall so notify the Authority and the MCC holder. If not cured, the Authority shall revoke any MCC that does not comply with the MCC Program.

Section 11 - Records and Reporting:

Lender shall comply with all data, records retention and reporting requirements applicable to the MCC Program, including all IRS reporting requirements.

Lender shall, at its own expense, maintain a file containing all documents prepared or collected with respect to each MCC and each Underlying Loan. Lender shall maintain such files for the longer of:
(a) six (6) years following the year in which the loan was made; or (b) a minimum of three (3) years from the date the loan is fully paid or otherwise terminated.

Lender agrees that the Authority and its agents may examine and inspect all books and records in Lender’s possession relating to any MCC, Underlying Loan and Lender’s work on the MCC Program. Lender shall provide the Authority and its agents access to such books and records during normal business hours upon the Authority’s request.

Section 12 - Preserving Confidentiality:

Lender shall comply with all applicable State and Federal requirements regarding Consumer Privacy.

Lender shall hold all borrower personally identifiable information and all Authority business information in strict confidence and shall prevent disclosure to others. Lender shall have executed the Authority’s “Confidentiality and Security Agreement.”

To reserve an MCC, Lender will use the Authority’s “Lender on Line” system, which is a secured limited-access system. To access Lender on Line, the Authority will provide Lender with access protocol and confidential login information and password (collectively "Access Information").

Lender shall:

(A) Protect the Access Information from unwarranted disclosure;
(B) Limit sharing the Access Information to Lender’s staff who have a specific need to access Lender on Line;
(C) Maintain a list of Lender staff who have been granted permission to use the Access Information and ensure such staff understand the confidentiality of all Access Information;

(D) Prohibit any unauthorized use of Lender on Line and the Access Information; and

(E) Immediately notify the Authority should Lender discover any breach or potential breach of access to Lender on Line or breach or potential breach of the confidentiality of the Access Information.

Lender shall be liable for noncompliance with this section, including being liable for any improper use of Lender on Line or the Access Information and for any unauthorized, intentional or accidental disclosure of the Access Information.

Section 13 - Lender as Independent Contractor:

In acting as a Participating MCC Lender, Lender shall be an independent contractor acting in its own behalf and for its own account and without authority, express or implied, to act for or on behalf of the Authority, in any capacity other than as expressed in this Agreement.

Section 14 - Indemnity and Hold Harmless:

Lender shall indemnify and hold harmless the Authority, Authority Board members and the Authority’s officers, agents, employees and representatives (collectively the “Indemnified Parties”) against all claims, actions and liability asserted against the Indemnified Parties 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 Lender’s act or omission (collectively “Claims”), including, without limitation, any Claim based on Lender’s statements or representations concerning the value of an MCC.

Section 15 - Governing Law:

This Agreement shall be governed by the laws of the State of New Hampshire. Any action related to this Agreement shall be brought in a court in New Hampshire.

Section 16 - Remedies:

No remedy that is provided to the Authority in the Agreement is an exclusive remedy. The Authority may avail itself of any and all available remedies stated in the Agreement and any and all remedies provided by law or equity.

No delay or omission to exercise any right or power accruing under this Agreement shall impair the Authority’s rights to pursue any and all available rights and remedies. Any delay or omission by the Authority in asserting any rights or remedies shall not be construed to be a waiver of any rights or remedies.
Section 17 - Notices:

All notices or other communications shall be deemed given: a) when hand delivered at the Authority’s Bedford office, evidenced by an Authority signed receipt; or b) five days after mailing by certified or registered mail, postage prepaid, return receipt requested, addressed to the address below. The Authority or Lender may, by written notice to the other party, revise the address for notices.

New Hampshire Housing Finance Authority

Physical Address:
32 Constitution Drive
Bedford, NH 03110

Mailing Address:
P.O. Box 5087
Manchester, NH 03108

Lender

At the address written on page one of this Agreement.

Section 18 - Lender’s Primary Point of Contact:

For the Authority’s purposes of marketing and the promotion of the MCC Program, the primary day-to-day point of contact for the Lender shall be:

__________________________________
Name of Contact Person

__________________________________
Title of Contact Person

__________________________________
Address

__________________________________
Email address

__________________________________
Phone number

__________________________________
Website

Section 19 - Nonassignable:

This Agreement and Lender’s rights herein and obligations hereunder are not assignable without the Authority’s prior-written consent.
Section 20 - Duration and Termination:

The Agreement shall remain effective until ________________, unless earlier terminated.

The Authority, with the Lender’s signed consent, may extend the Agreement’s term.

The Agreement may be suspended or terminated if the Authority has allocated all of its MCC capacity.

The Authority or Lender may terminate this Agreement, without cause, upon 60 days written notice to the other party.

Upon written notice, the Authority may immediately terminate this Agreement and prohibit Lender from participating in the MCC Program if Lender fails to comply with this Agreement, the MCC Program Guidelines or the Program Manual.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date stated below.

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

___________________________
Dean J. Christon
Executive Director

Date Executed

_________________________
Lender Signature

Typed or Printed Name of Signer

_________________________
Title

Date Executed