

Participation Agreement

To Be Completed By Lender

\_\_\_\_\_(LENDER) hereby certifies that the Nebraska Department of Environment and Energy (NDEE) has contributed a sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) toward a current advance evidenced by a promissory note signed as maker by the Borrower, the amount, date and maturity of the note and security therefor, if any, being shown below.

1 \_\_\_\_\_ 2 \_\_\_\_\_  
Borrower Name Federal Taxpayer Number For Borrower 1

\_\_\_\_\_  
Borrower Mailing Address County of Residence For Borrower

Note for Current Advance: Dated \_\_\_\_\_

\_\_\_\_\_  
Maturity Date \$ \_\_\_\_\_

This promissory note is  unsecured  secured. If secured, the security is: \_\_\_\_\_

The terms and conditions of this note are further detailed in a Loan Summary dated \_\_\_\_\_, and subsequent Summary of Changes, if any, dated \_\_\_\_\_, which is/are made a part hereof by reference.

It is agreed:

1. The LENDER is a Nebraska bank, savings institution or credit union and the promissory note evidencing this shared obligation will be held and serviced by one of its offices located within the State of Nebraska.

2. This loan participation evidences a sale of a percentage ownership in the approved loan and the corresponding note or notes, collateral security, and other loan documents under the Dollar and Energy Saving Loan Program and shall in no way be construed as an extension of credit by NDEE to LENDER.

3. NDEE's share of the amount advanced under the promissory note bears no interest.

4. The LENDER will exercise the same degree of care and discretion in continuing to service the loan and collecting the payments thereunder as LENDER would ordinarily take in the payments thereunder solely for its own account. The loan is considered in default if the borrower does not pay the full amount of each monthly payment on the date it is due. In the event such a default occurs, the LENDER is required to pursue the collection of the defaulted loan until it is brought current, collected in full or reduced to a judgement which has been executed and has resulted in no less than a lien on the borrower's real property. Should the borrower have no real property, the lien is to be on personal property or a garnishment of wages. Collection efforts by the LENDER on a defaulted loan may be terminated upon providing documentation to NDEE that the borrower has been discharged of their debts by the U.S. Bankruptcy Court and the LENDER has filed a claim with the Court if permitted, or that the borrower has died and a claim was filed against the estate and there were insufficient assets in their estate for a full recovery. All costs of collecting shall be borne by the LENDER. Any recovery on the loan will go first to repay the LENDER its share of the principal balance, accrued interest due, and the collection costs, with the balance applied to NDEE's share.

5. LENDER makes no representations or warranties, whether expressed or implied, to NDEE as to the collectibility of the loan, the continued solvency of the Borrower or as to the existence, sufficiency or value of the collateral securing the loan; or to NDEE as to the validity and enforceability of the documentation for the loan, other than that to the extent required under applicable law, the deed of trust and/or security agreements under the loan were (and/or will be) properly recorded in order to result in the valid perfection of a security interest on the collateral subject to such agreements. The parties hereto further agree that NDEE shall have no interest in any other property of the Borrower or of any co-maker, guarantor, endorser, taken as security for any other and/or additional loan or loans made by LENDER or acquired by LENDER or in any property now or hereafter in the possession or control of LENDER, which other property may indirectly secure repayment of the loan by reason of "cross-collateralization"; except that if any such other property or the proceeds thereof is applied to the reduction of the loan, then NDEE shall be entitled to share in such an application of payment or payments as provided herein.

6. LENDER will make available to NDEE, during its ordinary business hours, the Borrower's loan file, as it relates to the loan, for NDEE's review and will arrange with the Borrower for NDEE staff to make an on-site inspection, as NDEE deems necessary, of the home financed under this program or accompany NDEE staff on inspections.

7. LENDER has verified the construction of the home by the Borrower with the proceeds of this loan by means of an appraisal report and Satisfactory Completion Certificate from the property appraiser along with the final Home Energy Rating System (HERS) Report.

8. LENDER will report on the status of all loans in default, on NDEE forms, within thirty (30) days of the end of each calendar quarter. LENDER will no longer be obligated to report on a defaulted loan after receiving written notice from NDEE that it has received proper documentation pursuant to paragraph 4 showing the LENDER has no further recourse against the borrower.

9. LENDER will remit NDEE's share of any loan payment collected during the course of a calendar month and the status of the loan to the NDEE no later than the end of the third month following, except for the pay off on a refinance of principal only on an existing loan, which must be remitted to NDEE prior to NDEE disbursing funds on the new loan. The LENDER will provide this information on forms supplied by the NDEE.

10. LENDER will retain the Borrower's loan file for a period of at least three (3) years after the Dollar and Energy Saving Loan has been paid in full.

11. LENDER has charged the Borrower only fees customary to the financing of a real estate mortgage and currently charged on other similar real estate mortgage loans made by the LENDER. A copy of the Settlement Statement detailing all loan fees and closing costs, and the signed promissory note are attached and made a part hereof by reference.

12. Terms contained in the Nebraska Department of Environment and Energy's commitment dated \_\_\_\_\_, to participate in the above referenced loan, are incorporated herein and made a part hereof by reference.

13. LENDER certifies that the approved loan amount is eligible for Energy Efficient Housing under the Dollar and Energy Saving Loan Program and underwritten as is customary for the financing of like real estate mortgages by the Lender.

14. LENDER certifies that the approved loan is a new loan, not a refinance of an existing debt or the financing of work completed prior to loan approval, unless it is a refinance of a previously approved loan under the program, which was a construction loan or the principal balance of an Energy Efficient Housing loan amortized with a balloon payment prior to the end of the maximum loan term.

15. LENDER certifies that the approved loan amount eligible for a Dollar and Energy Saving Loan is only for the cost of the project, not for labor provided by the Borrower.

16. LENDER shall have the right, at its sole and exclusive option, to repurchase NDEE's ownership interest in the approved loan. The repurchase price shall be equal to NDEE's principal interest in the approved loan as then outstanding.

17. LENDER will not without NDEE's written consent (a) renew, extend or consent to a revision in the provisions of the note evidencing the shared obligation or a security document; (b) make or consent to any release, subordination, substitution or exchange of security for the shared obligation (provided that if the security is collateral in the form of accounts or inventory, then when no portion of the shared obligation is overdue or where NDEE has not otherwise instructed LENDER in writing, LENDER may permit the Borrower to collect accounts, sell inventory and use the proceeds thereof, all in the ordinary course of the Borrower's business); (c) sell, assign or transfer any of said security, waive any claim against the Borrower, the guarantor or a standby or substituted creditor in connection with the shared obligation; (d) cause or allow the principal of the shared obligation to be increased; (e) to negotiate, sign, discount, endorse or guarantee any note or obligation of the Borrower or issue any letter of credit as to the Borrower.

18. The note evidencing this shared obligation may not be held by any entity other than a Nebraska bank, savings institution or credit union in a Nebraska office. Any transfer of ownership of said note may be only to a Nebraska bank, savings institution or credit union. LENDER will notify NDEE in writing within thirty (30) calendar days if the ownership of the note evidencing this shared obligation has been transferred and will provide NDEE with the name, mailing address, and telephone number of the Nebraska bank, savings institution or credit union to whom ownership has been transferred and the Nebraska office(s) which will hold and service the note.

19. LENDER will not sell or contract loan service for the note evidencing this shared obligation to any entity other than a Nebraska company. Said company's office servicing the loan must be located in Nebraska. LENDER will notify NDEE in writing within thirty (30) calendar days following said sale or contract of loan service and will provide NDEE with name, mailing address and telephone number of the Nebraska company to whom loan service has been sold or contracted and the Nebraska office which will provide the service.

20. No employee of NDEE shall participate in any decision relating to the agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is indirectly interested or have any interest, direct or indirect, in the agreement or the proceeds thereof.

21. Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement, or successors in office.

22. If a court holds that any term of this Agreement is invalid, that holding shall not affect the other terms, which shall remain in full force and effect.

23. Parties failure to comply with the terms of this agreement will be considered a breach of contract.

24. The promises, conditions, benefits and powers herein contained shall bind and inure to the respective successors of the parties. Whenever used herein, the singular number shall include the plural, the plural the singular, and the terms LENDER and NDEE will include any payee thereof, whether by operation of law or otherwise.

\_\_\_\_\_  
Name of Financial Institution

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Lender Federal Taxpayer #

The Nebraska Department of Environment and Energy hereby accepts all conditions of this Participation Agreement without recourse.

Nebraska Department of Environment and Energy

by \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**Submit this Agreement, Final Loan Summary (FORM 12), a copy of the appraisal report and satisfactory completion certificate from the property appraiser, a copy of the final HERS rating with associated completed checklists, if applicable, and a copy of the borrower's promissory note and settlement statement to: [energy@nebraska.gov](mailto:energy@nebraska.gov), or mail to NDEE, PO Box 98922, Lincoln, NE 68509**