

**CALIFORNIA HOUSING FINANCE AGENCY
ACCESSORY DWELLING UNIT GRANT PROGRAM**

ADU LENDER PARTICIPATION AGREEMENT

THIS ADU LENDER PARTICIPATION AGREEMENT (this "Agreement") is entered into this _____ day of _____, 20____ (the "Effective Date"), by and between, the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California ("CalHFA"), and _____, a _____ ("Lender").

RECITALS

WHEREAS, the 2015—2025 Statewide Housing Plan of California seeks to address housing supply and affordability by, among other things, encouraging alternative housing models, including the development of accessory dwelling units, and the programs that promote them;

WHEREAS, CalHFA has made funds available and developed a grant program to be marketed and made through approved lenders to eligible low-to-moderate income homeowners to help finance the construction of accessory dwelling units thereby meeting one of the stated objectives of the Statewide Housing Plan;

WHEREAS, Lender has made funds available pursuant to a qualified program to eligible homeowners to help finance the construction of accessory dwelling units;

WHEREAS, Lender desires and has sought approval from CalHFA to participate in the grant program to augment the financial assistance provided through its own construction loans to eligible low-to-moderate income borrowers to build accessory dwelling units on their single-family residential properties;

WHEREAS, CalHFA desires to authorize Lender to market and participate in the making of grants eligible under the program, as more particularly described herein; and

WHEREAS, the program is created to, among other things, (i) strengthen communities by increasing homeowner equity, intergenerational wealth building opportunities and stabilizing a homeowner's financial situation by creating an income-producing accessory dwelling unit; (ii) create housing densities in existing neighborhoods; (iii) provide affordable housing opportunities to extended family members, the elderly, and persons and families of low-to-moderate income; and (iv) create economic opportunities for eligible owners to maximize use of their single-family residential properties.

NOW, THEREFORE, in consideration of the mutual promises expressed herein, the parties hereto agree as follows:

1. **Recitals.** The foregoing recitals are incorporated herein by this reference and shall form a part of this Agreement as if recited herein at length.
2. **Definitions.** As used in this Agreement:
 - 2.1. "Accessory Dwelling Unit" ("ADU") shall have the same meaning as defined by either (i) the Federal Housing Agency (FHA) pursuant to the 4001.1 Handbook or (ii) the Fannie Mae Selling Guide, as applicable.

- 2.2. “Application” means the information and documentation provided by Lender in a form approved by CalHFA in order to make a Grant through Lender to an Eligible Household.
- 2.3. “Construction Loan” means a loan of a specified sum of money made by a Lender with its own funds pursuant to a Qualified Lender Program to an Eligible Household to finance the construction of an ADU, evidenced by a promissory note and secured by a Construction Loan Deed of Trust on real property.
- 2.4. “Construction Loan Deed of Trust” means a written instrument creating a lien on real property to provide security for the payment of a Construction Loan to an Eligible Household for an ADU.
- 2.5. “Eligible Costs” means costs of pre-development fees and costs necessary to build and occupy an ADU, including but not limited to, non-reoccurring closing costs, architectural designs, permits, soil tests, impact fees, property survey and energy reports.
- 2.6. “Eligible Household” means the person(s) who meet the income and all other eligibility requirements pursuant to the Program Term Sheet.
- 2.7. “Eligible Household Affidavit” means an affidavit in a form approved by CalHFA, signed and acknowledged by the trustor(s) named in the Construction Loan Deed of Trust certifying that (i) the residential property upon which the ADU will be built is owner-occupied; (ii) the ADU shall meet all local zoning ordinances and building codes; and (iii) acknowledgement that they shall receive a Form 1099-G alerting them of potential income tax consequences.
- 2.8. “Grant” means an award of funds made from CalHFA to Eligible Households through Lender to finance the construction of an ADU.
- 2.9. “Lender” means the party identified in the introductory paragraph above and which has been approved by CalHFA in writing to participate in the Program.
- 2.10. “Lender Affidavit” means an affidavit in a form approved by CalHFA, signed and acknowledged by an authorized representative of Lender certifying that (i) construction of the ADU will comply with all FHA and government-sponsored enterprise guidelines (e.g., Fannie Mae) for accessory dwelling units; (ii) all required permit and/or impact fees have been paid; and (iii) Lender has verified Eligible Household’s present household annual income does not exceed the current maximum income restriction established by CalHFA.
- 2.11. “Program” means the grant program developed by CalHFA with funds made available and approved by its board of directors to be marketed and made through approved entities to eligible low-to-moderate income homeowners to help finance the construction of accessory dwelling units on their single-family residential properties.
- 2.12. “Program Bulletin” means a written announcement communicated to Lender by CalHFA describing one or more changes to the Program from time-to-time.
- 2.13. “Program Term Sheet” means the terms and conditions developed by CalHFA that govern the Program and published on the CalHFA website. The Program Term Sheet is incorporated herein by reference and may be amended by CalHFA from time-to-time and will become effective and binding upon the Lender upon notice to the Lender without amending this Agreement.

2.14. “Qualified Lender Program” means one or more of the following programs offered to eligible homeowners to help finance the construction of accessory dwelling units on their single-family residential properties: (i) a loan program developed by a government-sponsored enterprise (e.g., Fannie Mae HomeStyle Renovation); (ii) a loan program developed by Lender with an existing Mortgage Purchase Master Agreement by and between Lender and CalHFA; or (iii) any other loan program developed by Lender that meets CalHFA’s terms and conditions and approved in writing by CalHFA, in its sole and absolute discretion. Lender agrees and acknowledges that, except for any loan program under (i) or (ii) as described in the preceding sentence, the terms and conditions of a Qualified Lender Program shall not be amended without the prior written consent by CalHFA, and that any such unauthorized or non-conforming changes shall constitute a breach of this Agreement.

3. **Non-Exclusive Agent.** CalHFA hereby designates Lender as its non-exclusive agent for the receipt and processing of Applications for Grants under the Program.

4. **Grant.**

4.1. Subject to all of the terms, covenants, conditions, warranties and representations contained in this Agreement, CalHFA agrees to provide individual Grants to Lender and on behalf of Eligible Households of up to the maximum allowed as more particularly set forth in the Program Term Sheet. The Eligible Household is not required to repay or reimburse the Grant to CalHFA.

4.2. Such Grants shall be awarded on a first-come, first-served basis for so long as CalHFA makes funds available for the Program. CalHFA may discontinue the Program at any time, provided that the discontinuance shall not affect Grants already approved by CalHFA.

4.3. Subject to the conditions hereinafter specified, CalHFA shall deposit good and lawful monies of the United States in an amount equal to the aforesaid Grant in an escrow account established by Lender in connection with the Construction Loan for the ADU.

4.4. The Grant shall be used solely to reimburse an Eligible Household for Eligible Costs incurred in connection with construction of an ADU paid for, in whole or in part, with proceeds from a Construction Loan.

4.5. CalHFA shall issue a Form 1099-G to the Eligible Household for the calendar year in which the Grant was made.

5. **Conditions of the Grant.**

5.1. Lender shall have made a Construction Loan with its own funds pursuant to a Qualified Lender Program to construct the ADU and shall provide to CalHFA proof of funding thereof. Lender acknowledges and agrees that CalHFA will not purchase the Construction Loan, reimburse Lender for the Construction Loan or provide any sort of guarantee for Lender having made the Construction Loan to an Eligible Household.

5.2. ADU must meet either Fannie Mae or FHA, as applicable, ADU feature requirements.

5.3. ADU shall meet all local zoning ordinances for use on the subject residential single-family property.

5.4. Eligible Household owns and occupies the residential single-family property on which the ADU will be built.

- 5.5. Eligible Household's present household annual income does not exceed the current maximum income restriction established by CalHFA as a condition for the Eligible Household's receipt of the Grant.
- 5.6. Lender agrees to utilize the Grant received from CalHFA solely to reimburse the Eligible Household for Eligible Costs.
- 5.7. Lender agrees to meet and comply with all terms and conditions set forth in the Program Term Sheet.

6. **Submission of Application.**

6.1. Lender shall coordinate its Construction Loan applications with CalHFA's processes and procedures and will obtain from the prospective Eligible Household all documents and information required for the Application for (and receipt of) a Grant, including, but not limited to the following:

6.1.1. Copy of the recorded Construction Loan Deed of Trust for ADU financing;

6.1.2. Construction Loan disbursement information, which shall include either: (i) escrow instructions to wire Grant funds; (ii) pursuant to an executed third-party management disbursement agreement approved by CalHFA; or (iii) other similar disbursement arrangement approved in writing by CalHFA, in its sole and absolute discretion;

6.1.3. Eligible Household Affidavit; and

6.1.4. Lender Affidavit.

6.2. Lender represents and warrants that copies of all reports, certificates, approvals and other documents that are furnished by an Eligible Household to CalHFA through the Lender are correct and unaltered copies of the original documents.

6.3. Lender agrees and acknowledges that CalHFA may amend the required documents to complete Applications, but only by providing notice through Bulletins or other means consistent with the provisions of notice herein.

6.4. Lender shall submit complete Application packages to CalHFA in a timely manner.

7. **Certificate of Occupancy.** Upon construction completion of the ADU, Lender shall immediately provide a copy of the Certificate of Occupancy for the ADU upon receipt. Failure to perform may be cause for immediate suspension and/or termination of this Agreement.

8. **Employee Training.** Lender shall assign specific member(s) of its staff to the Program. Such staff members shall have e-mail addresses and internet access which allows them to access CalHFA's web site to receive update information regarding the Program. Lender represents and warrants that any member of Lender's staff that works with households or potential households under the Program are familiar with all applicable laws and regulations with regard to the Program and the documentation thereof.

9. **Information.** Lender shall make information regarding the Program available to potential Eligible Households. Lender shall give the Eligible Household a complete Program information package at

the time prospective applicant applies for a construction loan. Lender shall process and review the application of any potential applicant in order to determine such person's eligibility under the Program. Lender shall use the forms approved by CalHFA and package the Grant applications in conformance with the Program Term Sheet.

10. **Investigation and Verification.** Lender will perform all investigations and verifications that would normally be performed for underwriting a mortgage not provided in connection with a Grant. Lender will notify the prospective applicant and CalHFA in writing of any decision to cancel processing for a Grant. Lender will conduct such reasonable investigation as is necessary to certify that the applicant has satisfied the requirements of the Program.
11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and applicable federal law. Lender hereby agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue for any action brought hereunder shall be exclusively in the County of Sacramento.
12. **Information Regarding Misrepresentations.** Lender hereby agrees to forward to CalHFA any and all information Lender receives which indicates or tends to indicate that misrepresentations were made by any applicant in applying for a Grant.
13. **Fair Lending Requirements.** Lender shall abide by all fair housing and lending requirements and agree to uphold the quality standards of the Program.
14. **Term.** This Agreement shall become effective upon its execution by Lender and CalHFA. Lender's authorization to market and submit Applications for Grants under this Agreement is effective upon completion of Lender training, at Lender's cost, provided for by CalHFA related to the Program. The Agreement shall remain in effect until terminated in accordance with its terms.
15. **Termination.**
 - 15.1. Either party may terminate this Agreement upon five (5) days written notice to the other party provided that the termination of this Agreement shall not affect Grants already approved by CalHFA.
 - 15.2. CalHFA may, in its discretion, require Lender to submit and comply with annual or other periodic re-certification requirements as they may be established by CalHFA from time to time. Lender hereby agrees that its failure to comply with those re-certification requirements shall be cause for immediate termination of this Agreement.
 - 15.3. In addition to the foregoing, CalHFA may immediately terminate this Agreement at any time as a result of Lender's breach of any provision of this Agreement, including Lender's breach of any of the representations and warranties contained in this Agreement.
16. **Records.** Lender shall allow CalHFA, on written request, to have reasonable access to and the right to inspect all records that pertain to the Program and the Grants made therefrom. The Lender shall retain a complete copy of the Grant file for at least three (3) years and maintain compliance with regulatory and legal requirements regarding document and record retention. The Lender must provide CalHFA with a copy of its records upon request.
17. **Audits.** Lender agrees to establish and maintain fiscal control and accounting procedures which assure that funds received pursuant to this Agreement are properly disbursed, adequately controlled

and reasonably accounted for. Adequate documentation of each transaction shall be maintained to permit the determination, through an audit if requested by CalHFA, of the accuracy of the records and the allowability of expenditures payable with CalHFA funds. If the allowability of any expenditure cannot be determined, the questionable expenditure may be disallowed by CalHFA in its sole discretion. Upon demand by the CalHFA, Lender shall immediately repay CalHFA for any disallowed expenditures.

18. **Notices.** Unless otherwise required, all notices and requests to CalHFA and Lender pursuant to this Agreement shall be in writing and shall be deemed given or received when mailed, by certified or registered mail, postage prepaid, addressed to CalHFA at 500 Capitol Mall, Suite 1400, Sacramento, California 95814 and to the Lender at the address shown below on the signature page unless another address is designated in writing by Lender.
19. **Severability.** If any provision of this Agreement is deemed to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect.
20. **Nonwaiver of CalHFA's Rights.** No right, remedy, or power of CalHFA in this Agreement shall be deemed to have been waived by any act or conduct on the part of CalHFA or by any failure to exercise or delay in exercising any right, remedy, or power. Every such right, remedy or power of CalHFA shall continue in full force and effect until specifically waived or released by an instrument in writing executed by CalHFA.
21. **Entire Agreement.** This Agreement, including any attachments, contains the entire understanding between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, between the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed and/or referred to herein.
22. **Interpretation of the Agreement.** The provisions contained in this Agreement shall not be construed in favor of or against either party but shall be construed as if both parties contributed equally to its preparation. This Agreement shall be construed in accordance with the laws of the State of California.
23. **Indemnification.** Lender shall indemnify and hold CalHFA harmless against any and all expenses, fees, losses, damages, penalties, fines, forfeitures, reasonable legal fees and related costs that CalHFA may incur as a result of any failure on the part of Lender to comply with this Agreement. Lender expressly recognizes that representations and warranties made by Lender that are not true shall constitute a breach of this Agreement.
24. **Assignment.** Lender shall not assign its rights nor delegate its duties under this Agreement without the prior written consent of CalHFA. Any attempted assignment or delegation in violation of this section shall be void. CalHFA shall have full right and authority to assign all or a part of its rights and delegate all or a part of its duties under this Agreement without Lender consent.
25. **Signature Authority.** All individuals signing this Agreement for a party which is a corporation, partnership, limited liability company or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the CalHFA that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

26. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement is effective upon transmission by any part to the other party of a fully signed facsimile copy of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

LENDER:

By: _____
Name: _____
Its: _____

Lender's Address for Purposes of Notice:

**CALIFORNIA HOUSING
FINANCE AGENCY:**

By: _____
Name: _____
Its: _____