

LENDER PARTICIPATION AGREEMENT

THIS AGREEMENT is made and entered as of the ____ day of _____, 200_, by and between SANTA CLARA COUNTY, a public body corporate and politic (hereinafter referred to as the "County"), and:

_____ (hereinafter referred to as the "Lender").

WITNESSETH:

WHEREAS, the Tax Reform Act of 1984 established the mortgage credit certificate program as a means of assisting qualified individuals with the acquisition of new and existing single-family housing; and

WHEREAS, pursuant to Chapter 1399, Statutes of 1985, Section 50197, et seq., of the Health and Safety Code, local issuers are authorized to issue mortgage credit certificates and administer mortgage credit certificate programs; and

WHEREAS, by Resolution adopted on May 12, 1987, the Board of Supervisors of the County has established a mortgage credit certificate program and directed the County to administer the program pursuant to the applicable federal, state and local policies and procedures; and

WHEREAS, by Resolution adopted on January 24, 1994, the Board of Supervisors of the County has added a reissued mortgage credit certificate component to their mortgage credit certificate program (the "Reissued Mortgage Credit Certificate Program"); and

WHEREAS, the cities of Campbell, Cupertino, Gilroy, Los Altos, Los Gatos, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose, Santa Clara and Sunnyvale each have established a mortgage credit certificate program and have adopted agreements with the County to administer the mortgage credit certificate program for their respective jurisdictions and act as their agent; and

WHEREAS, the Lender wishes to participate in the Reissued Mortgage Credit Certificate Program administered by the County in connection with the refinancing mortgage loans ("New Loans") it will make available;

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

1. The County hereby designates the Lender as its agent for receipt and processing of applications for reissued mortgage credit certificates (each a "Reissued Mortgage Credit Certificate") under the County's Reissued Mortgage Credit Certificate Program.

2. The Lender will make information regarding the Reissued Mortgage Credit Certificate Program available to potential borrowers. The Lender will process and review the application for any potential borrower in order to determine eligibility for the Reissued Mortgage Credit Certificate Program.

3. The Lender will obtain from the borrower all documents and information required for the application for (and receipt of) a Reissued Mortgage Credit Certificate as directed by the County.

4. The Lender will perform all investigation and verification that it would normally perform for underwriting a mortgage not provided in connection with a Reissued Mortgage Credit Certificate.

5. The Lender will conduct such reasonable investigation as necessary to certify that the applicant has satisfied all requirements of the Reissued Mortgage Credit Certificate Program, including those imposed by temporary and permanent regulations issued pursuant to the Internal Revenue Code and the County's eligibility requirements.

6. The Lender warrants that it is familiar with the Internal Revenue Code and all temporary and permanent regulations issued pursuant thereto applicable to the Reissued Mortgage Credit Certificate Program, as well as all provisions of state law applicable to the Reissued Mortgage Credit Certificate Program and guidelines established by the County. The Lender hereby agrees to comply with all provisions of applicable federal and state law and said regulations and guidelines.

7. The Lender will charge a potential borrower applying for a Reissued Mortgage Credit Certificate only those reasonable fees as would be charged to a potential borrower applying for mortgages not provided in connection with a Reissued Mortgage Credit Certificate.

8. Notwithstanding the provisions in Paragraph 7 above, the Lender may charge each borrower an application fee of \$350.00 for processing each Reissued Mortgage Credit Certificate. Of this amount, \$250.00 is to be paid to the County.

9. The Lender hereby agrees that it will immediately forward all information which it may receive during the life of the New Loan which tends to indicate that a misrepresentation was made in applying for a Reissued Mortgage Credit Certificate or that may affect the applicant's continued eligibility for a Reissued Mortgage Credit Certificate.

10. The Lender agrees to participate with the County with respect to the County's Reissued Mortgage Credit Certificate Program with respect to the refinancing of the following types of Old Loans:

- fixed rate only,
- variable rate only,
- both fixed and variable rate.

11. The Lender understands that the reissued credit pursuant to a Reissued Mortgage Credit Certificate (the "Reissued Credit") may not be larger in any taxable year than the existing credit (the "Existing Credit") with respect to the refinanced loan (the "Old Loan"). In accordance with the provisions of a Reissued Mortgage Credit Certificate, the Lender agrees to calculate the Reissued Credit Cap Limit and the Certified Indebtedness Amount Ratio (as defined in Exhibit A to the Reissued Mortgage Credit Certificate). If the lender has agreed to participate in the Reissued Mortgage Credit Certificate Program with respect to the refinancing of variable rate loans, the Lender agrees to provide such information to the holder of the Reissued Mortgage Credit Certificate (as described in Exhibit A to the Reissued Mortgage Credit Certificate) no later than 30 days following the end of the taxable year, as more fully set forth on Exhibit A to the Reissued Mortgage Credit Certificate. The Lender agrees to contact the lender with respect to the Old Loan to verify (or to verify in some other manner) the outstanding principal balance of the certified indebtedness amount of such loan (exclusive of accrued interest and other fees and charges) as of the date of closing of the New Loan. The Lender agrees to verify with the lender with respect to the Old Loan (or verify in some other manner) that the terms of the Old Loan are the same as the terms of the Old Loan stated in the documents provided by the applicant pursuant to the Reissued Mortgage Credit Certificate Application Affidavit.

12. The Lender understands that the Reissued Mortgage Credit Certificate must be issued to the holder of a mortgage credit certificate (with respect to the Existing Credit) (the "Existing Mortgage Credit Certificate") with respect to the same property to which the Existing Mortgage Credit Certificate relates, and the Lender agrees to abide by the terms of the Ownership Change Addendum (RMCC-019).

13. The Lender understands that the Reissued Mortgage Credit Certificate must entirely replace the Existing Mortgage Credit Certificate (*i.e.*, the holder cannot retain the Existing Mortgage Credit Certificate with respect to any portion of the outstanding balance of the certified indebtedness amount specified on the Existing Mortgage Credit Certificate).

14. The Lender understands that the certified indebtedness amount specified on the Reissued Mortgage Credit Certificate may not exceed the outstanding principal balance of the certified indebtedness amount specified on the Existing Mortgage Credit Certificate as of the date of closing of the New Loan. The certified indebtedness amount of the Old Loan does not include borrowings of principal subsequent to the closing date of the Old Loan. Further, any prepayments as of the closing date of the New Loan (other than as a result of the refinancing with the New Loan) must be taken into account.

15. The Lender understands that the certificate credit rate of the Reissued Mortgage Credit Certificate may not exceed the certificate credit rate of the Existing Mortgage Credit Certificate.

16. The Lender understands that the Existing Mortgage Credit Certificate must have been issued with respect to a loan to acquire property — not a refinancing. The Lender agrees to provide to the County a copy of the preliminary and final title report with respect to the New Loan for the applicable property. The Lender agrees to ascertain that the name of the lender (and the closing date of the loan) with respect to the original mortgage to the Reissued Mortgage Credit Certificate holder specified in the final title report matches those facts specified on the Existing MCC.

17. The County may at any time notify Lender that the Reissued Mortgage Credit Certificate Program is terminated with respect to all future Reissued Mortgage Credit Certificates for which a complete application has not yet been received by the County.

18. This Agreement shall remain in full force and effect until terminated. Except as provided in paragraph 19 below, the Lender may terminate this Agreement, without cause, upon sixty (60) days written notice to the County. Notwithstanding any such termination, the Lender shall file any and all reports to be filed with the Internal Revenue Service, and shall maintain all records required to be maintained by it pursuant to Section 25 of the Internal Revenue Code of 1986, as amended, and any regulations thereunder. The County may immediately terminate this Agreement and prohibit the Lender from participating in the Reissued Mortgage Credit Certificate Program upon Lender’s failure to comply with the terms and conditions of this Agreement and upon written notice by the County. No amendment to this Agreement shall be effective unless in writing and signed by both parties herein.

19. The Lender understands that once a Reissued Mortgage Credit Certificate is issued, the covenants of the Lender in this Agreement with respect to the Reissued Mortgage Credit Certificate remain for each taxable year while the New Loan is outstanding; provided, the Lender may, if consent is obtained from the County (at the sole discretion of the County), transfer the calculation responsibilities described in paragraph 11 to another person or entity.

For purposes of this Agreement, the term “Lender” means the entity to appear on the deed of trust with respect to the New Loan.

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

FOR LENDER:

Company Name _____	Contact Name _____
Street Address _____	Title _____
Title _____	Signature _____
City _____	
Telephone _____	
Fax _____	
Email: _____	

FOR SANTA CLARA COUNTY:

By _____
Title _____

Complete this form. Attach a check in the amount of \$100 made payable to the County of Santa Clara and return this form and the check to the County. We will return a signed copy of this form after County review and acceptance. New RMCC Lenders may be required to attend a RMCC training with County program staff before acceptance into the program.