

# KANSAS HOUSING

## The Kansas Housing Resources Corporation HOME Investment Partnership Program MORTGAGE LENDER ORIGINATION AGREEMENT

THIS Kansas Housing Resources Corporation LENDER ORIGINATION AGREEMENT (hereinafter "AGREEMENT") made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Kansas Housing Resources Corporation (hereinafter "KHRC"), a body corporate and politic, with offices at 611 South Kansas Ave, Suite 300, Topeka, Kansas 66603 and \_\_\_\_\_

(hereinafter "Lender"), whose address is \_\_\_\_\_.

### WITNESSETH:

WHEREAS, KHRC desires to assist low to moderate income individuals and families in the State of Kansas with the purchase of new or existing affordable single family housing units by implementing the U.S. Department of Housing and Urban Development (hereinafter "HUD")'s HOME Investment Partnerships Program, First Time Homebuyer Program and AMERICAN DREAM DOWNPAYMENT INITIATIVE loan program (hereinafter collectively "Program"), made possible in part through the applicable provisions of the "HOME" Investment Partnerships Act" (hereinafter "HOME" Program), created by the National Affordable Housing Act of 1990, as amended, and section 205 of the Housing and Community Development Act of 1992 (hereinafter "NAHA"), and the rules and regulations of 24 CFR Parts 91 and 92 (hereinafter "HUD Regulations"), promulgated thereunder by HUD, including the American Dream Downpayment Initiative interim rule published in the March 30, 2004 Federal Register, and the applicable rules and regulations promulgated pursuant thereto by the Kansas Housing Resources Corporation which includes the Training and Operations Manual and forms, and all other applicable Kansas Housing Resources Corporation Regulations, HOME, NAHA and HUD regulations (hereinafter collectively "Acts and Regulations") all of which are incorporated herein by reference;

WHEREAS, in order to encourage homeownership in the State of Kansas, KHRC has agreed to provide HOME funds to Lenders to make downpayment assistance loans to qualified low-to-moderate income individuals and families by providing lenders with the right to originate and process KHRC Program loans, subject to the provisions more particularly set forth herein;

WHEREAS, Lender has agreed to use its best efforts to originate and process KHRC Loans to qualified low-to-moderate income individuals and families in accordance with the Acts and Regulations.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, KHRC and Lender agree as follows:

**ARTICLE ONE**  
**Definitions**

All words and phrases in this Agreement shall have the identical meaning as defined in the Manual referred to hereinabove, unless the context herein shall otherwise dictate. Notwithstanding anything in this Agreement to the contrary:

**Section 1.01.** The term “affordable single family housing unit” shall mean a single family property lying and being situate wholly outside the 100-year flood plain, whose “as built” value, as determined by a qualified appraiser approved by the Lender, may not exceed the maximum sales price limitations as defined by the Acts and Regulations in effect upon the date of the KHRC Loan(s).

**Section 1.02.** The term KHRC Loan shall mean a KHRC HOME Investment Partnership Loan in an amount not to exceed 20 percent (20%) of the purchase price of an affordable single family housing unit if household income is less than 50% of area median income and 15 percent (15%) of the sales price if household income is more 50% but less than 80% of area median income for the State of Kansas. The housing unit may not be located in the city limits of Kansas City, Lawrence, Topeka, Wichita, or in Johnson County. The home must be purchased by qualified low-to-moderate income individuals and families who are first time homebuyers. The KHRC Loan will be evidenced by a Second Mortgage Promissory Note and secured by a Mortgage which shall be a second mortgage lien on the single family housing unit.

**Section 1.03.** The term “low-to-moderate income individuals and families” (hereinafter “Borrower”, whether one or more parties), shall mean all persons or families as are defined by the Acts and Regulations in effect on the date of the KHRC Loan(s).

**ARTICLE TWO**  
**Representations**

**Section 2.01. KANSAS HOUSING RESOURCES CORPORATION**

The Kansas Housing Resources Corporation (KHRC) represents and warrants that:

(a) KHRC is a body corporate and politic of the State of Kansas (hereinafter “State”), duly organized and existing under the constitution and laws of the State. KHRC has authorized the execution and delivery of this Agreement.

(b) KHRC, as the Participating Jurisdiction for the State of Kansas under the HOME program, is implementing, through a formula grant from HUD, the KHRC Loan Program for HUD under the terms of this Agreement.

**Section 2.02. Lender**

Lender represents and warrants that:

- (a) Lender is in good standing and authorized to do business in the State of Kansas and customarily provides a service in the State of Kansas in the financing of mortgage loans to qualified homeowners.
- (b) Lender will, during the term of this Agreement and any extension thereto, remain subject to the supervision and examination by Federal or State of Kansas authorities, as the case may be, and will not make a change in the character of its business which would materially adversely affect its performance hereunder, and will at all times during the term of this Agreement, remain in good standing and qualified to do business under all applicable Federal and State laws. All records of Lender pertaining to this Agreement, the Program, or loans made thereto, shall be open for inspection to KHRC or its agents upon reasonable notice.
- (c) Lender has the power and authority to execute, deliver and perform, and to enter into all of the transactions contemplated by this Agreement, and has duly authorized the execution, delivery and performance of this Agreement.
- (d) Lender will originate and process KHRC Loans in compliance with the Acts and Regulations, the covenants, terms and conditions of this Agreement and the Manual, and all other applicable requirements as set forth in the Acts and Regulations. If a conflict arises, the following order of preference shall govern: (1) HOME Program Acts and Regulations; (2) this Agreement; (3) the Program Manual.
- (e) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated herein, nor the fulfillment of, or compliance with, any of the terms and conditions of this Agreement, conflict with or will result in a breach of the instruments creating Lender or governing Lender's operations, or any of the terms, conditions, or provisions of any legal restriction(s) or any agreement(s) or instrument(s) to which Lender is now a party, or by which Lender is bound, or constitute a default under any of the foregoing.
- (f) Each KHRC Loan will (i) be evidenced by a Second Mortgage Promissory Note and secured by a Second Mortgage on eligible properties located within the State of Kansas; and, (ii) will be occupied by the Borrower as the Borrower's principal place of residence, all as more particularly provided for in the Manual and set forth in a representation made by the Borrower to Lender by Affidavit under penalty of perjury; and, (iii) Lender will comply with each and every requirement of the Manual, and Acts and Regulations not herein specifically set forth.

Additionally, lender acknowledges and will abide with the following:

- (a) Lender must have been operating in the State for at least three years-*provide evidence of continuous operation in the State for the last three years.*
- (b) Lender must be able to offer, FHA, VA, USDA RD and/or Conventional loans-*provide evidence of approval from each entity.*

- (c) Banks and Savings & Loans must be FDIC insured-*provide evidence of FDIC*.  
Credit Unions NCUA insured-*provide evidence of NCUA*.
- (d) Lender must present evidence of one of the following:
  - (1) E & O insurance-*provide Certificate of Insurance*, or
  - (2) a Fidelity Bond-*provide evidence of Fidelity Bond*.
- (e) Lenders must offer mortgage loans as a primary part of their business.
- (f) All lenders must attend a KHRC lender training session.

### **ARTICLE THREE**

#### **Commitments to Originate, Process and Fund Kansas Housing Resources Corporation (KHRC) Loans**

**Section 3.01. Commitment to Originate and Process KHRC Loans.** Lender agrees to originate and process KHRC Loans to Borrowers qualified as set forth in Section 1.03, above, and in compliance with the Acts and Regulations and the covenants, conditions and agreements more particularly set forth herein and in the Manual.

**Section 3.02. KHRC Commitment to Fund KHRC Loans.** KHRC agrees to provide Lender with funds for any KHRC Loans originated by Lender that are pre-approved in writing by KHRC.

### **ARTICLE FOUR**

#### **Origination and Servicing of KHRC loans**

**Section 4.01. Loan Proceeds.** All distributions of KHRC Loan proceeds made pursuant to this Agreement shall be disbursed solely by Lender.

**Section 4.02. Title to Loan Documents.** Legal title and physical possession of the original KHRC Loan document (s) will be held by and will be in the name of KHRC at all times, and for the use and benefit of KHRC.

**Section 4.03. Collateral.** To the extent applicable, legal title and physical possession of any Collateral which may secure payment of the KHRC Loan will be held by and in the name of KHRC at all times herein.

**Section 4.04. Lender's Duties and Liability.** So long as Lender acts in good faith in originating, processing and closing the KHRC Loan(s) originated in accordance with this Agreement, and complies with the covenants, terms and conditions of this Agreement and the Acts and Regulations, Lender will incur no liability to KHRC unless any such Loan:

- a. is not secured by a second mortgage lien, or
- b. is secured by property partially or wholly within a 100-year flood plain; or,

- c. the Borrower is over the income limits for the KHRC Program; or,
- d. the sales price of the property exceeds the maximum sales price established by the KHRC Program; or,
- e. the KHRC Loan is made in violation of any of the other Acts or Regulations, in which event or events, Lender agrees to fully indemnify and hold KHRC harmless and agrees to repurchase the KHRC Loan from KHRC upon disclosure and demand by KHRC of such event(s) with respect to such KHRC Loan, always provided however, Lender makes no representations and assumes no responsibility with respect to the collectability of any KHRC Loans or as to the correctness, validity or enforcement of any provision contained in any instrument, certificate, opinion or other document delivered or to be delivered to Lender in connection with any KHRC Loan.

Lender will maintain such files, books and records regarding each KHRC Loan as Lender would maintain for similar loans in which Lender participates, and will fully maintain such files, books and records as may be necessary to record and evidence the transactions contemplated by this Agreement and as required by KHRC.

**Section 4.05. Fees, Expenses.** During the term of this Agreement, Lender may not collect from Borrower, nor will Lender be required to pay KHRC any loan or servicing fees or expenses related to any KHRC Loan(s) other than as set forth in the Manual.

**Section 4.06. Assignment.** Neither KHRC nor Lender may assign all or any portion of their respective rights or obligations under this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld, always provided however, succession to Lender's position hereunder and in the KHRC Loan by a surviving qualified mortgage banking institution upon merger, consolidation or other reorganization of Lender, shall not be deemed to constitute an assignment under this paragraph.

**Section 4.07 Credit and Identity of Borrower/Disclosure Statement.** Both Lender and KHRC shall be satisfied with the income of Borrower as it is shown on the Credit and Identity of Borrower/Disclosure Statement, and Lender, in its sole discretion, shall be satisfied with the credit and identity of Borrower and shall have approved the title, the Note, the Loan Documents, title and hazard insurance policies and other items required hereunder or in the Manual, prior to approving and accepting any KHRC Loan hereunder. KHRC and Lender understand that this Agreement has not been registered under the Securities Act of 1933, as may have been amended from time to time, or under any state securities act and each party further understands that KHRC is acquiring such Loan(s) for its own account without issuing notice to the public.

**Section 4.08. Reservation by KHRC of Right to Reject KHRC Loans.** Any provision in this entire Agreement to the contrary notwithstanding, KHRC reserves the right to review and reject all KHRC Loans subsequent to loan approval by Lender and the disbursement of any KHRC Loan funds by KHRC upon determination of the occurrence of any of the events itemized in Section 4.04 (a through e), above.

**ARTICLE FIVE**  
**Termination of Agreement**

**Section 5.01. Termination of Agreement.** This Agreement may be terminated by KHRC or Lender, without cause and without penalty against KHRC or Lender, or either of them, giving to the other sixty (60) days written notice of termination.

**Section 5.02. Agreement to Pay Attorneys' Fees and Expenses.** In the event KHRC or Lender shall fail to perform any of their obligations under any of the provisions of this Agreement or the Manual, or abide by any of the Acts or Regulations incorporated herein by reference, causing KHRC or Lender to employ attorneys or incur other expenses for the enforcement of performance of any obligations(s) or agreements(s) on the part of KHRC or Lender herein or therein contained, KHRC and Lender, as the case may be, each agree that the prevailing party shall be reimbursed by the losing party for all fees, costs, and expenses, including reasonable attorney's fees, incurred in enforcing their respective rights hereunder.

**ARTICLE SIX**  
**Miscellaneous Provisions**

**Section 6.01. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

**Section 6.02. Further Assurances and Corrective Instruments.** To the extent permitted by law, KHRC and Lender agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such amendments hereto and such further instruments as may reasonably be required for carrying out the intention of, or facilitating the performance of, this Agreement, but only if such amendments are in accordance with the Acts and Regulations.

**Section 6.03. Notices.** Unless otherwise specifically provided herein, all formal notices hereunder shall be in writing and mailed by registered or certified mail, postage prepaid, to the respective parties hereto, or to such other address as either party hereto may designate by written notice, from time to time hereafter.

**Section 6.04. Construction.** This Agreement and the rights and obligations of Lender and KHRC hereunder shall be construed under the laws of the State of Kansas. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State and Federal courts located in the County of Shawnee, State of Kansas. Lender and KHRC agree that this Agreement contains the entire understanding of Lender and KHRC, subject to the covenants, terms and agreements herein, and that this Agreement may not be changed, modified, amended, altered or terminated orally, except by agreement in writing, signed by the party against whom such change, modification, amendment, alteration or termination is sought. Nothing in this Agreement will be construed to constitute a partnership, joint venture or agency relationship between KHRC and Lender or is intended or shall be construed to confer upon any person, other than the parties hereto, any right, remedy or claim under this Agreement. The descriptive headings of the paragraphs are for convenience only and are not to be used in the construction of the content of this Agreement. This Agreement

may be executed in multiple counterparts each of which will be an original instrument, but all of which will constitute one agreement.

**Section 6.05. Additional Subsidies.** It is expressly agreed that other sources of funding or subsidy may be utilized in conjunction with the KHRC program provided:

- a. Total amount of HUD funds invested in any property shall not exceed the regulatory maximum prescribed by HUD.
- b. No funds from any seller-financed down payment assistance program shall be allowed in conjunction with KHRC loans, including any down payment assistance purporting to pass from the seller through a not-for-profit agency.
- c. The KHRC loan shall not be subordinated to a junior lien position, other than the purchase money first mortgage, without the express written consent of KHRC.
- d. Purchase money Home Equity Lines of Credit (HELOC's) shall not be allowed in conjunction with the use of KHRC loans.

**Section 6.06. Privacy Policy.** All parties acknowledge and agree that nonpublic personal information about consumers and customers, as defined in the Gramm Leach Bliley Act of 1999 and implementing regulations, will be maintained in a confidential manner, and shall be used and disclosed to third parties only to carry out the purposes contemplated in this Agreement and as permitted or required by law. All parties agree to establish and maintain appropriate policies and procedures to insure the confidentiality of Lender's customers' and consumers' nonpublic personal information, including appropriate administrative, technical, and physical safeguards and procedures: (1) to protect against any anticipated threats or hazards to the security and integrity of such records; (2) to protect against any unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to a customer, and (3) to provide timely notification to the other parties if or when customer information is accessed in an unauthorized manner. This provision shall survive termination of the Agreement.

(This space intentionally left blank.)

IN WITNESS WHEREOF, the parties here to have caused their names to be signed hereunder by their respective officers thereunto duly authorized and their respective seals, duly attested, to be hereunto affixed, all as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)  
ATTEST:

**Kansas Housing Resources Corporation**

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

STATE OF KANSAS )

)ss

COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, known to me personally and known to me to be the duly appointed Authorized Agent and the person who executed the aforesaid instrument by virtue of the authority vested in them, and acknowledged that they executed the aforesaid instrument for and on behalf of the Kansas Housing Resources Corporation for the purpose therein expressed.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

ATTEST:

**(LENDER)**

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

STATE OF KANSAS )

)ss

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, a corporation, and in accordance with the minutes and by laws of said corporation; and said officers acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written

MY TERM EXPIRES: \_\_\_\_\_