

PARTICIPATION AGREEMENT

Multifamily Financing Program



Agreement by and between the **New York State Energy Research and Development Authority** (NYSERDA), a public benefit corporation having its principal office and place of business at 17 Columbia Circle, Albany, New York 12203-6399, and _____ (LENDER), having its principal office and place of business at _____.

Whereas NYSEDA agrees to provide a sum, as described below, toward a Loan (the “Loan”, as summarized below, and in one or more instruments substantially in the form of the instrument(s) attached as Appendix B) expected to be made between LENDER and the BORROWER identified below:

LENDER Information

Name of Lending Institution “LENDER”	
Address of Lending Institution	
Name of Contact at Lending Institution	
Contact Phone Number	
Contact Email Address	

BORROWER Information

BORROWER Name	
BORROWER Mailing Address	
Project Name (as listed on Pre-Approval Form)	
Project Address	

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Loan Information

LENDER Loan Number (if known)	
NYSERDA Agreement Number (NYSERDA staff only)	
Total Loan Amount	
NYSERDA share of Loan (up to 50% of qualifying energy efficiency improvements, and up to the lesser of \$5,000 per unit or \$500,000 per building)	
Loan Term for NYSERDA's share of Loan (cannot exceed the weighted useful life of the measures as listed on the Pre-Approval Form)	
Loan structured as (select one below) * final interest rate to determined at Loan closing	
Single Loan note with a blended interest rate	_____ % (anticipated blended interest rate)*
Two Loan Notes: Note One (principal and interest) Note Two (principal and 2% interest)	_____ % (anticipated interest rate on Note One)*
Loan Security (if any)	

Payment Information

Payment instructions for NYSERDA share of Loan payable upon Loan closing (select and complete one)	
Elect to receive paper check	_____
	Payee Name

	Attention

Elect to receive Electronic Payments	Address

	City State Zip Code

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Now, therefore, in consideration of the promises and mutual covenants and agreements hereinafter set forth, the parties do hereby agree as follows:

1. By signing this Participation Agreement, LENDER certifies that it meets the following definition of a “Lender”:
An organization that is a financial institution authorized by federal or State law to operate in New York State and is any of the following:
 - Credit union insured by the National Credit Union Administration
 - Community Development Financial Institution (CDFI)
 - Commercial bank
 - Trust company
 - Savings bank
 - Savings and loan association
 - Foreign bank credit union
 - Leasing subsidiary of a bank holding company or a leasing company owned by an eligible lender
2. This Participation Agreement evidences a sale of a percentage ownership in the Loan and Loan Security (if any) under NYSERDA’s New York Multifamily Financing Program (Green Jobs – Green) and shall in no way be construed as an extension of credit by NYSERDA to LENDER.
3. NYSERDA's percentage ownership in the approved Loan shall not exceed fifty (50) percent of the total sum advanced to BORROWER under the Loan for energy efficiency improvements qualifying for financing, as identified in Appendix A, and up to the lesser of \$5,000 per unit or \$500,000 per building.
4. NYSERDA's share of the sum advanced shall bear two (2) percent interest to the BORROWER, and shall be repaid at two (2) percent interest by LENDER, as described below.
5. The interest rate charged by the LENDER on its portion of the loan shall not exceed the interest rate customarily charged by the LENDER for a similarly situated borrower.
6. Within 180 days of the execution of the Participation Agreement between NYSERDA and LENDER, the LENDER will close the Loan. The Lender will electronically transmit to NYSERDA’s Master Loan Servicer a copy of the closed loan in PDF format, a copy of the Executed NYSERDA Participation Agreement in PDF format and a data file containing information on the Loan in a format prescribed by the Master Loan Servicer, which will be transmitted on a scheduled day of each week as prescribed by the Master Loan Servicer. The Master Loan Servicer shall review the data file and closed Loan document for completeness and compliance with this Participation Agreement. The Master Loan Servicer or NYSERDA shall notify LENDER promptly if any data is missing or needed in order to release NYSERDA’s share of the Loan to the LENDER or if the Loan participation is rejected

for failure to comply with the terms and conditions of this Participation Agreement. The Master Loan Servicer shall complete its review and provide its decision regarding approval within 48 hours of receipt from LENDER.

7. The LENDER shall send an electronic copy (PDF format) of the LENDER's closed Loan with the BORROWER to NYSERDA via email at GJGNMFB@nyserda.ny.gov.
8. NYSERDA shall transfer to LENDER NYSERDA's share of the Loan based upon the payment instructions provided by LENDER above, within seven (7) days of receipt of approval from the GJGNY Master Loan Servicer.
9. LENDER shall remit payments to NYSERDA through its Master Loan Servicer. Payments shall be due no later than 15 days after the date due from BORROWER. The Master Loan Servicer shall mail a statement to the LENDER in advance of each scheduled payment due date and provide instructions for such payment. If there is a change in the Master Loan Servicer, LENDER shall be notified in writing by NYSERDA.
10. LENDER shall repay NYSERDA's pro rata share of the Loan principal and interest in consecutive equal monthly installments of \$_____, in each month during which the BORROWER has made a scheduled payment under the Loan, but shall not be obligated to make payment to NYSERDA if no payment is received from the BORROWER. In the event that BORROWER prepays any amount due under the Loan, the prepayment amount shall be applied, on a pro rata basis determined by the percentage ownership in the Loan, to the outstanding balances of both the NYSERDA and LENDER shares of the Loan. Notwithstanding any other provisions of this agreement, if the BORROWER makes a scheduled payment that is less than the amount due, the payment amount shall be applied, on a pro rata basis determined by the percentage ownership in the Loan, to the outstanding balances of both the NYSERDA and LENDER shares of the Loan.
11. LENDER certifies that the NYSERDA portion of the Loan is a new Loan.
12. 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.
13. Should LENDER incorporate incentive payments made to the BORROWER under the Multifamily Performance Program into the repayment schedule of the Loan, LENDER and BORROWER must both provide written acknowledgment that said incentive payments are made by NYSERDA based upon the Terms and Conditions of the signed contract between Borrower and NYSERDA.
14. The Loan is considered in default if any scheduled payment is past due 90 days or more. In the event such default occurs, LENDER and NYSERDA shall consult upon themselves as to a mutually agreed upon course of action to pursue in order to collect the amounts then owed under the Loan. All costs of collecting shall be borne by LENDER. Any recovery on the Loan will go first to repay LENDER its

collection costs and accrued interest due, with the balance applied proportionately between the principal balance owed to LENDER and the principal balance and accrued interest owed to NYSERDA.

15. Unless NYSERDA has expressly consented to such action, NYSERDA shall not be liable to any third party as a result of any action of LENDER, which is subsequently found to be illegal or negligent, and shall have no obligation to reimburse any portion of any judgment, order or decree entered against LENDER. The LENDER shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to any action of the LENDER. This obligation shall survive any expiration or termination of this Agreement.
16. LENDER makes no representations or warranties, whether expressed or implied, to NYSERDA as to the collectability of the Loan, the continued solvency of the BORROWER, or as to the existence, sufficiency or value of the collateral securing the Loan, if applicable; or to NYSERDA 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) validly perfected or recorded and constitute a first lien or security interest on the collateral subject to such agreements. If such lien or security interest is not a first lien or security interest, such fact must be disclosed to NYSERDA and NYSERDA must consent to the making of the Loan on collateral in which the LENDER and NYSERDA do not have a first lien or security interest. The parties hereto further agree that NYSERDA 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 NYSERDA shall be entitled to share in such an application of payment or payments as provided herein.
17. Upon reasonable notice, LENDER will make available to NYSERDA, during its ordinary business hours, the BORROWER's Loan file, as it relates to the Loan, for NYSERDA's review.
18. Provided no default exists under the Loan, LENDER will not, without NYSERDA's written consent, (a) renew, extend or consent to a revision in the provisions of the Loan; (b) make or consent to any release, subordination, substitution or exchange of security for the Loan (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 NYSERDA 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 Loan; (d) cause or allow the principal of the Loan to be increased; (e) to negotiate, sign, discount, endorse or guarantee any note or obligation of the BORROWER or issue

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any letter of credit as to the BORROWER. Such written consent from NYSERDA shall not be unreasonably withheld.

- 19. LENDER will notify NYSERDA, in writing, if the Loan is sold or if its serving has been subcontracted, and will provide NYSERDA with the name, mailing address and the telephone number of the buyer or servicer within thirty (30) calendar days following said sale or agreement to service.
- 20. 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.
- 21. 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 NYSERDA will include any payee thereof, whether by operation of law or otherwise.

LENDER

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By: _____

By: _____

Name: _____

Jeffrey J. Pitkin

Title: _____

Treasurer

Date: _____

Date: _____

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APPENDIX A
Pre-Approval of Eligible Energy Efficiency Measures
(attach form at the time of application)

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Appendix B

Preliminary Loan Document(s) must include draft Note (s) with the following information and must match the information provided in the Participation Agreement:

Borrower Name
Project Name and Address
Total Loan Amount
NYSERDA Loan Amount
Lender Interest Rate
Lender Loan Term
NYSERDA Loan Term
NYSERDA monthly loan installment
Loan Security- if applicable