

## PARTICIPATION AGREEMENT

Agreement made this \_\_\_\_ day of \_\_\_\_, 2001 between \_\_\_\_\_, whose address is \_\_\_\_\_ ("Agent"), and \_\_\_\_\_, whose address is \_\_\_\_\_ ("Participant").

### Recitals

A. Agent is the owner of loans secured by mortgages on real estate which have been originated by Agent, and Agent desires to sell a participating interest in a selected number of these loans.

B. Participant desires to purchase a participating interest in said mortgage loans.

C. This agreement governs the sale and transfer by Agent to Participant of the undivided participation ownership interests in the mortgage loans ("loan" or "loans") identified in the Participation Certificate in the form attached to this Agreement as Exhibit "A" and issued pursuant to this Agreement, including the percentage of the principal amount of loans representing the undivided interests sold, the purchase price, the interest to be paid to Participant, and Agent's responsibilities for servicing and other incidents with respect to the resulting participation ownership interests. Agent's trusteeship responsibilities and the warranties and representations made by Agent herein are made for the benefit of Participant, its successors, and assignees and are intended to be binding upon Agent whether or not it services the loans itself.

NOW, THEREFORE, the parties in consideration of the foregoing recitals and the mutual covenants hereinafter set forth, agree as follows:

## TERMS OF AGREEMENT

### ARTICLE I

#### Sale and Transfer of Undivided Participation Interest in Loans

**1.01 Sale and Identification of Participation Ownership Interests.** Agent agrees to sell to Participant and Participant agrees to buy from Agent the undivided participation ownership interests in the loans identified in the Participation Certificate. The Participation Certificate specifies, among other things, the percentage of the principal amount of the loans sold, the identification of the loans sold, the purchase price paid by Participant, and the interest to be paid to Participant.

#### **1.02 Warranties and Representations.**

**A. Qualifications of Agent.** Agent is a duly organized and validly existing \_\_\_\_\_ and is qualified to transact business in and is in good standing under the laws of each state in which the real estate securing any loans sold under this Agreement is located or is otherwise not required under applicable law to affect such qualification and in any event, Agent is or will be in compliance with the laws of any such state to the extent necessary to insure the enforceability of each such loan, the loan instruments and the servicing of the loans in accordance with the terms of this Agreement.

**B. Agent's Ownership of Loans Sold and Compliance with Applicable Law.**

Agent represents and warrants that as of the date Participant buys an undivided participation ownership interest in any loan and is issued a Participation Certificate under this Agreement in evidence thereof, all loans described in such Participation Certificate are loans owned by Agent, having been made or acquired by it pursuant to and in compliance with all applicable federal and state laws and rules.

**C. Possession of Loan Documentation on Date of Sale.** Agent further represents and warrants that it is authorized to sell the participation interests described in Exhibit "A" and that such participation interests are eligible under applicable laws, regulations, and this Agreement for purchase by Participant; Agent has in its possession all instruments, or certified true copies when the originals are being filed or recorded, representing each such loan and all records required to be maintained for such loans (and will provide upon request access thereto at any reasonable time during normal business hours and pursuant to applicable law and regulations and will deliver copies of any such instruments and records to Participant on its request).

**D. Other Warranties and Representations.** Agent further represents and warrants that as of the date of the Participation Certificate; (1) each loan is current as to scheduled periodic payments, (2) there are no delinquent tax or assessment liens or mechanics' liens on the security properties, (3) there is no default, breach, violation or event of acceleration of a material nature existing under the loan instruments with regard to each loan, (4) the security properties are free of substantial damage and are in good repair, (5) none of the loans are pledged as collateral for any loan or for any other purpose, (6) no part of the security properties has been released from the liens securing the applicable loans, (7) all representations as to each such loan are true and correct, including but not by way of limitation, the amount due, (8) all documents submitted are genuine, and all other representations as to each loan sold are true and correct and meet the requirements and specifications of all parts of this Agreement and Agent certifies that any and all copies of documents concerning loans purchased by Participant are, to the best of Agent's knowledge, accurate and complete copies of those documents within our files, (9) the loan instruments contain customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the real estate securing said loan of the benefits of the security, and (10) Agent has no knowledge that the secured real estate is subject to any defects or inadequacies in the record title thereof which would adversely affect the value or marketability of the loan or make it unacceptable for prudent investment nor is Agent aware of any pending litigation which would affect the title or interest of Agent in the loan instruments or the secured real estate or the marketability of the loan.

**E. Bonding.** Agent represents and warrants that Agent shall maintain a blanket fidelity bond and an errors and omissions insurance policy, with broad coverage with responsible companies on all officers, employees or other persons acting on behalf of Agent in any capacity with regard to the loans sold under this Agreement, to handle funds, monies, documents and papers relating to such loans. Any such fidelity bond and errors and omissions insurance shall protect and insure Agent against losses, including forgery, theft, embezzlement, fraud, errors and omissions and negligent acts of such persons. No provision of this section requiring such fidelity bond and errors and omissions insurance shall diminish or release Agent from its duties and obligations as set forth in this Agreement. If a loss occurs in connection with a loan sold under this Agreement which is covered by such fidelity bond or errors and omissions insurance, Participant shall be immediately entitled to a pro rata share of the proceeds thereof equal to

Participant's participation ownership interest in said loan.

## **ARTICLE II Trust Provisions**

**2.01 Agent as Trustee.** It is agreed that Agent and Participant are not partners or joint venturers and that Agent is not to act as agent for Participant but is to act in all loan administration and servicing matters hereunder for Participant not only as an independent contractor but also as a trustee with fiduciary duties to hold the participation ownership interests in the loans, the loan instruments, and the loan receipts hereunder and to make the remittances as specified in this Agreement, Agent shall hold legal title to the loans with respect to which participation interests are sold under this Agreement as trustee for the owner or owners of the respective participation ownership interests, including its own, if any therein. It further is agreed that Agent, as trustee, shall not assign its responsibilities under this Agreement nor transfer legal title to such loans except in accordance with Article V of this Agreement.

**2.02 Custody of Loan Instruments.** It is agreed that Agent, as trustee, shall retain the physical possession of the mortgage notes evidencing all loans sold under this Agreement and shall be responsible for seeing that the title evidence and policies of insurance for the account of Agent and all participation owners hereunder are properly maintained. Agent will keep all such documents in segregated files appropriately marked to show that a participating interest or interests therein has been sold, and all envelopes and files pertaining to such documents shall be so marked. Agent shall hold such loans and documents as trustee for the benefit of all owners of participation ownership interests to the extent of their beneficial interests. Any beneficial owner has the right at any reasonable time during normal business hours to request and have access to and examine any and all books, records, and documents relating to any loan in which the beneficial owner has a participation ownership interest relating to any of the matters covered by this Agreement.

**2.03 Agent Representations Regarding Participation Ownership Interest Sold.** Agent will not represent to any person that Agent owns any portion of the participation ownership interests sold under this Agreement. Agent will reflect the transaction hereunder on its balance sheet and other financial statements as a purchase of assets by Participant and a sale of assets by Agent.

**2.04 Participant as Holder of Equitable Title and Beneficial Owner of Participation Interests in Loans.** Upon Participant's payment of the purchase price for any participation ownership interest in any loan, Participant shall immediately become vested, to the extent of its participation ownership interest, with beneficial ownership of the loan and any and all of the documents of every nature in the possession of Agent relating to such loan. Each participating owner is the holder of the equitable title to that owner's pro rata share of each loan.

## **ARTICLE III Administration and Servicing of the Loans**

**3.01 Servicing Responsibilities.** Agent represents that in undertaking responsibility for performance of the services specified in this Agreement, it will exercise the same degree of care that Agent exercises with respect to the administration and servicing of loans for Agent's own account, and that in its function of trusteeship it will exercise that degree of care which is legally required of a trustee. Agent shall be responsible for the execution of all appropriate

notices and all other acts necessary to perfect title in Participant, Participant's successors, or Participant's assignees, as the case may be, as to the ownership of the respective participation interests in the loans sold under this Agreement. Agent shall further be responsible for preserving all rights on said loans and administering them in all respects consistent with applicable laws and regulations and for servicing the same in a manner consistent with good mortgage practice.

**3.02 Remittance.** Agent will be responsible for segregating, reporting, and delivering to Participant, any successors, and assignees by or before the day of each month set forth in the Participation Certificate its or their pro rata share of all principal and interest, and late charges, if any. In the event such collected funds are not received by Participant on or before the day of the month set forth in the Participation Certificate, Agent shall be subject to a late charge of 2% of the amount of such collected funds not received and such charge shall be payable on demand by Participant.

**3.03 Loan and Other Prepayments.** In the event that a prepayment is made on any loan, Agent will be responsible for segregating and delivering within the number of working days set forth in the Participation Certificate to all participation interest owners hereunder its or their pro rata portion of the amount of principal prepaid and of any prepayment penalty assessed and collected. Agent shall assess and collect the maximum amount of prepayment penalty authorized under the terms of the applicable mortgage instrument and in accordance with applicable law, rules, and regulations as from time to time amended. In the event such collected funds are not received by Participant on or before the day set forth in the Participation Certificate, Agent shall be subject to a late charge of 2% of the amount of such collected funds not received and such charge shall be payable on demand by Participant. Funds received on the account of the loan debtor for the purpose of paying taxes, assessments, insurance premiums, or other similar purpose will be retained and disbursed by Agent or its designee at its discretion and in compliance with applicable laws and regulations.

#### **3.04 Agent's Authority Regarding Loan Modifications.**

**A General Authority.** Subject to the provisions of Section 3.10 regarding default by the loan debtor, Agent shall have the exclusive right to decide how loans sold under this Agreement shall be serviced and what to do and how to do it, as trustee for all of the owners of participation interests hereunder, except Participant shall be consulted and shall have the final authorization (which authorization must be in writing but shall not be unreasonably withheld) to determine the following:

(1) To approve assumptions or similar third party undertaking and in the event Participant rejects the proposed assumption, Agent shall enforce the due on sale clause in such loan to the maximum extent permitted under the law with the intent that such loan shall be deemed non-assumable by third parties;

(2) When to accelerate the entire balance due on any loan for any permissible reason;

(3) When and how to exercise remedies for default, including judicial or non-judicial sale or foreclosure, receivership, exercise of the assignment of rents, deed in lieu or to otherwise acquire the property in the manner thereof;

- (4) Whether or not to obtain a deficiency judgement;
- (5) Whether or not to buy at a judicial or non-judicial sale or foreclosure and for how much; or
- (6) How to administer any foreclosed or otherwise acquired real estate, including maintaining, improving, leasing or selling the same.

Agent shall not, without Participant's consent, commingle acquired real estate with any other property held by Agent in any sales transaction entered into pursuant to this agreement.

**B. Unanimous Approval.** In addition to any other matters specifically requiring unanimity under the terms of this Agreement, the following actions shall only be undertaken upon the unanimous approval of Agent and Participant:

- (1) Forgive or reduce the indebtedness under loan or loan instruments;
- (2) Release (except upon full repayment of the loan) or substitute collateral for the loan;
- (3) Release any party liable for repayment of the loan or for performance of any other obligation relating to the loan; or
- (4) In any material respect, modify, cancel, or amend the loan, the loan instruments, or waive any of its rights thereunder, or waive any material condition to borrower's right to receive disbursements of the loan.

**3.05 Records Maintenance.** Agent, as trustee, is responsible for maintaining or requiring the maintenance of a complete set of books and records as to all the loans in which Participant has acquired a participation ownership interest under this Agreement, including, but not limited to, a record of each receipt and each disbursement; and in addition to making sure the customary monthly reports and remittances are furnished each owner of a participation interest hereunder, shall make sure that such reports are accompanied by a monthly report of loan delinquencies, separately indicating the number and aggregate principal amount of loans delinquent one (1) month and two (2) or more months, the book value of any real estate acquired through foreclosure or a deed in lieu of foreclosure, and the aggregate principal amount of loans in which Participant or any successor or assign is a participant, categorized separately by the type of real estate security.

### **3.06 Additional Advances.**

**A. Advances for Taxes and Insurance.** It is agreed that Agent, at its discretion, may make additional advances on loan in good standing for taxes and insurance premiums, and that upon the making of any such advance, it will issue an additional participation certificate or certificates to each owner of participation interest hereunder reflecting the amount of the additional advance which shall specify that each such owner shall receive as its interest on said advance an amount at the yield specified in the latest Participation Certificate covering such loan, and upon the making of any such loan advance each such owner promptly shall pay its pro rata participation share.

**B. Recording of Advances.** In the case of every advance, a notation shall be made in the books and records required under this Agreement identifying and describing each advance and Participants participation or nonparticipation therein. A copy thereof promptly shall be furnished to Participant.

### **3.07 Agent's Fees.**

**A. "Ordinary" Fees.** Agent is to receive for its fee, including interest on any participation interest it retains in the loans covered under this Agreement and fees for the servicing of said loans, the remainder of the interest not payable to Participant. Agent shall also receive its proportionate share based on its pro rata interest of any default penalties or late charges and other amounts payable by the loan debtors, unless otherwise provided in the Participation Certificate.

**B. "Extraordinary" Expenses.** While Agent acknowledges that the interest on its participation ownership interest, if any, shall be the amounts provided for under the terms of this Agreement and any applicable Participation Certificate issued hereunder and that, in addition, it has agreed to be responsible for servicing the loans for such consideration as provided for in this Agreement, it is further agreed that any necessary extraordinary services which may be proper under this Agreement, such as the foreclosure of mortgages, property maintenance and improvement, property management, the sale of any foreclosed real estate, and similar extraordinary expenses, shall be contracted or done by Agent at its customary cost for such services; provided, that such cost is reasonable and that Agent will be responsible for the prompt billing of each participation owner hereunder for its pro rata share of such expense, and each such owner shall be required to pay promptly its pro rata share of such extraordinary expense incurred and billed under this Agreement.

**3.08 Assumption Fees.** When a loan covered by this agreement is assumed by a third party, Agent and Participant shall share pro rata in all assumption fees collected.

**3.09 Notification Requirements.** Agent shall have a duty to use due diligence to ascertain, and forthwith to notify Participant of any failure of any loan debtor to perform any obligation under the applicable loan and also of any of the following which might come to the attention of Agent or its designated servicer.

**A.** Except in the ordinary course of business of Borrower, the vacating of or any change in the occupancy of any premises securing a loan sold under this Agreement;

**B.** The sale or transfer of any such premises;

**C.** The death, bankruptcy, insolvency, or other disability of any loan debtor which might impair ability to repay the loan;

**D.** Any loss or damage to any such premises, in which event, in addition to notifying Participant, Agent shall see to it that the insurance companies concerned are promptly notified and appropriate claims filed; and

**E.** Any lack of repair or any other deterioration or waste suffered or committed in respect to the premises securing the loan.

It is understood, however, that no notice need be given to Participant of any facts other than those of which Agent shall have actual notice or would, except for its negligence, have had notice.

### **3.10 Default by Loan Debtor.**

**A. Right to Repurchase Participation Interests.** In the event of such default, Agent, at its option but without obligation to do so, will have the right and privilege to repurchase all outstanding participation ownership interests hereunder in such loan from the owner(s) thereof on the basis of each of said owner's pro rata share of the then unpaid balance, except that any person or firm having the greatest ownership interest in the loan as reflected on Agent's books and records shall have Agent's initial option for such repurchase. If such person or firm, after notice, does not promptly exercise such option, the Agent shall have such option to repurchase all of the described outstanding participation ownership interests hereunder.

**B. Agent's Duties.** In the event of the inability of Agent to collect applicable payments on any of said loans after exercising reasonable efforts to do so, Agent shall be responsible for giving prompt notice, directly or through a servicer, to all owners of participation interest hereunder, and causing an appraisal to be made of the security property if requested by Participant. Subject to the written authorization of Participant as otherwise provided in this Agreement, Agent shall be responsible for foreclosing the same by appropriate procedure to be determined by it, and if, in Agent's judgement, it is proper, it will buy in the security property at the foreclosure sale, or accept a deed in lieu of foreclosure. Subject to the written authorization of Participant as otherwise provided in this Agreement, Agent shall be responsible for managing and maintaining any such real estate acquired in liquidation, and improving the same and selling or disposing of it under such terms as Participant deems to be proper. Agent shall be responsible for servicing until completely liquidated any installment contracts or purchase monthly loans resting from such sale as continuance of and on the same terms herein provided for the servicing of loans. All owners of participation interests hereunder shall share ratably in the income and expense incurred pursuant to this provision, including all necessary expenses incurred in the payment of taxes, insurance premiums, waste and vandalism prevention, repairs, maintenance, improvement, management, foreclosure, attorneys' fees, and other similar expenses. Participant agrees to pay promptly its proportion of any such expenses deemed by Agent to be appropriate and any subsequent participants of any participation interests represented by the attached Participation Certificate are also subject to this requirement. Such amounts which are proper to be capitalized as determined by Participant will be allocated to and be treated as part of the specific loans or properties affected.

### **C. Ownership and Operation of Project upon Acquisition of Title.**

(1) **Ownership and Administration.** If Agent shall at any time acquire title to all or any part of the collateral for the Loan, through foreclosure or otherwise as permitted in this Agreement, Agent shall acquire and hold such title in the name of the Agent and Participant, as tenants in common in proportion to their respective pro rata shares, or as otherwise determined after Participant's approval. Subject to the provision of Sections 3.04 and 3.10B, Agent shall have the authority and responsibility for the day-to-day administration and management of such property, except that, on notice to Participant, Agent may delegate such authority and responsibility to a third party, which third party shall be reasonably acceptable to Participant.

(2) **Profits and Expenses.** In the event title to the collateral for the Loan is acquired by Agency and Participant, as provided herein, each shall received and/or pay, as the case may be, its and their pro rata share of the profits actually received and/or expenses incurred in the administration and management of any property acquired pursuant to this Section (1). Agent (or any third party, which may or may not be an affiliate of Agent, to which Agent, after obtaining Participant's approval, has assigned the authority and responsibility) shall receive a fee equal to five percent (5%) of the gross rents or income of the property (the "Property Management Fee") for its services in administering and managing such property.

**3.11 Other Authorized Acts.** If, from time to time, any of the loans covered under this Agreement are endorsed, assumed, guaranteed, or insured, or the obligations thereunder are further secured by other collateral, then it is agreed that Agent shall, and Agent is authorized to, act for the owners of participation interests with respect to such matters, as their interest may appear; provided, that in the event any of said loans are insured or guaranteed by a governmental agency, Agent shall be the mortgagee of record in relation to the contract of insurance or guaranty, and the insurer or guarantor shall have no obligation to recognize or deal with any other party except the approved mortgagee of record with respect to the rights, benefits, and obligations of the mortgagee under the contract of insurance or guaranty.

**3.12 Periodic Reports and Inspections.** Agent shall use due diligence in obtaining those periodic reports and statements that are required by the loan instruments, including operating statements, financial statements and rent rolls, copies of which shall be furnished to Participant upon completion of Agent's analysis. Agent shall also routinely perform property inspections, exercising the same degree of care that Agent exercises with respect to loans for Agent's own account, and shall furnish copies thereof to Participant.

#### **ARTICLE IV Transferability and Sale of Participation Interests to Third Parties**

**4.01 Authority to Transfer Participation Interest and Legal Title Held by Agent.** Subject to section 4.03 below, participation ownership interest in loans subject to this Agreement are transferable upon the books and records of Agent. After each sale and transfer of a participation ownership interest in a loan pursuant to this Agreement, the participation interest of Participant, any retained participation interest of Agent, and any other participation interest in the same loan will be taxably concurrent, and none will have any priority over the other.

**4.02 Rights of Third Parties on Resale.** In the event Participant or any successor or assignee of Participant resells to a third party or parties all or a portion of its participation ownership interest, such third parties shall succeed to all of the rights of Participant for the portion purchased, and such resale will be evidenced by a new participation certificate or certificates which Participant or its successor or assignee shall issue in the same form as the Participation Certificate attached hereto and which shall set forth the percentage of the underlying loans being resold. All reselling parties to such resale transactions shall promptly notify Agent of such resale by written instructions identifying the percentage of the underlying loans being resold and the number of the participation certificates representing such resold interests. Upon receipt of such instructions, Agent, as trustee, will be responsible for segregating and for causing notation to be made in the books and records to reflect the participation ownership interests resulting from such resale and, thereafter for segregating and causing

monthly remittances and reports to be made to the respective owners of such participation interests in a manner consistent with the participation ownership interests then outstanding and the provisions of the Agreement.

**4.03 Maintenance of Agent's Ownership Interest and Servicing Rights.** All participation ownership interest not sold to Participant in each participation loan, together with the servicing rights related to such participation loan, shall be retained by Agent and shall not be sold, assigned or transferred by Agent during the term of this Agreement without the prior written consent of Participant.

## **ARTICLE V Agent's Insolvency and Breach of Contract**

In the event of any of the following: (1) the insolvency of Agent, (2) the filing by or against Agent of a petition under any provision of bankruptcy law, or of an assignment for the benefit of creditors, (3) the appointment by any public or supervisory authority of any person or firm in charge of Agent or its assets, (4) a breach by Agent of any covenant or agreement herein or in any Participation Certificate, (5) the involuntary sale of any loans or advances covered by this Agreement, or (6) the issuance by an appropriate public monitoring or supervisory authority of a cease and desist order or its equivalent against Agent or its directors and officers, involving the safety, soundness, or financial viability of Agent, it is agreed that the person or firm having the greatest participation ownership interest in the loans as reflected on Agent's books and records shall automatically succeed to all rights, titles, status, and responsibilities which Agent may have regarding the holding and servicing of said loans and advances. Such person or firm shall have an option to exercise all of the powers hereinabove granted to Agent, and have the option to designate itself or any person or firm, at its discretion, to exercise such powers in a manner consistent with respective participation interests of all owners hereunder as such interest may appear. If no one person or firm has a greater participation ownership interest in said loans than any other, then such successor shall be such owner of a participation ownership interest in the loans as may be designated by agreement of those whose aggregate participation ownership interest in said loans and advances exceed fifty percent (50%). In the event no such agreement is reached within twenty (20) days from the date of any of the above described causes of Agent's conditions or incapacity, then the participation interest owner designated by the Federal Home Loan Bank of the district in which Agent is located shall succeed to all such holding and servicing rights, titles, status, and responsibilities. In such event, said loans and advances and an records thereof shall be delivered to such successor or its designee, as the case may be, together with necessary or proper assignments, transfers, and documents of authority, and reasonable compensation shall be paid to the person or firm exercising such powers. In such event, reasonable servicing expense shall be paid by Agent, but all advances for insurance, taxes, maintenance, improvements, or any other necessary or proper outlays on account of the loans shall be provided, on demand, by the participants as their interest may appear. In the event any owner of a participation ownership interest deriving from this Agreement fails promptly to provide funds for the payment of insurance, taxes, maintenance, improvements, or any expenses in connection with said loans and advances, then any other such owner is authorized to supply the same, bear interest at the greater of the note rate or penalty rate, and it shall be reimbursed from the first funds available for the account of such defaulting party.

**ARTICLE VI**  
**Miscellaneous Provisions**

**6.01 Definitions.** The terms used in this Agreement shall be constructed to mean the following:

A. "Instrument" or "loan instrument" shall include, but not be limited to, the following, (1) the mortgage note, (2) the appropriate security instrument and any filings which are required to perfect an interest in personal property, (3) separate assignments of rents, if any, (4) applicable loan application and credit reports, (5) appropriate evidence indicating loan debtor's receipt of the disclosure materials as required by the applicable loan and disclosure rules and regulations, (6) an appraisal or signed report of a certificate of valuation together with a survey of the secured real estate or title policy without any survey exception, (7) properly signed loan closing settlement statement or statements, (8) Agent's attorney's mortgage lien opinion, or paid up title insurance policy payable to Agent in an amount at least equal to the outstanding principal balance of the loan, or other documentary evidence customarily used in the jurisdiction in which the security property is located, affirming the quality and validity of Agent's lien securing the loan; provided, however, certain documentary evidence that is not required by applicable law, rules, and regulations is excepted from the above requirement, (9) hazard insurance policies in an amount representing coverage at least equal to the outstanding principal balance, or the full insurable value of the improvements, whichever is less, and of a type substantially in the form of and at least as protective as the fire and "broad form of extended coverage" loss mortgage clause which provides that Agent's hazard insurance is not invalidated by acts of the loan debtor (also known as the non contributory standard mortgage clause and lender's loss payable endorsement Form 438 BFU NS or its equivalent), (10) such flood insurance policy as is required under the Flood Disaster Protection Act of 1973, as amended, and other regulations, and (11) personal guaranties, if any.

B. "Mortgage" or "security instrument" shall mean a security interest, whether in the form of a mortgage or deed of trust, constituting a first lien on the real property described therein as security for the obligation set forth in said security instrument.

C. "Normal business hours" shall mean the posted business hours of any party on a day which banks in the state of \_\_\_\_\_ are customarily open for the transaction of business.

D. "Greatest participation ownership" shall mean the holders of more than fifty percent (50%) of the participation percentage in the loan.

E. "Borrower" shall mean the party to whom or for whose benefit the proceeds of the loan have been or will be disbursed.

**6.02 Agreement to Repurchase Participation Interests.** Agent agrees, upon Participant's request, to repurchase any participation interest sold under this Agreement within three (3) months after the date of Participant's remittance of the purchase price therefor if any misstatement of material fact by Agent, intentional or otherwise, is disclosed by actual inspection by Participant or its representative, or otherwise. The repurchase price shall be for an amount equal to such participation interest's then unpaid principal, plus accrued interest and costs incurred by Participant for any action taken.

**6.03 Purchase of Additional Participation Interests.** Pursuant to negotiations, Agent will submit to Participant from time to time, at its option, additional participation ownership interests and supply Participant with any information or documentation requested with respect to those interests. In the event Participant, in its sole discretion, elects to purchase any additional participation ownership interests, a Participation Certificate, in the form attached hereto as Exhibit "A", shall be completely filled out and executed by Agent and delivered to Participant. Participant shall thereupon furnish its check for its participation ownership interest in the principal amount, plus its share in any accrued interest, as shown by such Participation Certificate.

**6.04 Representations, Liability.** Participant has relied upon Agent for all matters contained in the submission of Agent regarding the borrower, the loan, and the loan instruments therefor and validity and enforceability thereof and is relying upon any representations of Agent relating thereto. Without limiting the generality of the foregoing, Participant acknowledges that it has sought, or determined of its own accord not to seek legal counsel regarding the loan. Except as to representations by Agent, all loss or losses, except as may otherwise be provided herein, shall be borne ratably by Agent and Participant in accordance with their respective interests in the loan.

**6.05 Fees and Commissions.** Agent hereby represents to Participant that it has not, directly or indirectly, charged or received, and agrees that it shall not charge or receive, any bonus, fee, commission, cost, or expense of any kind in connection with the negotiation and consummation of the loan, except for such charges and expenses which are authorized hereunder, disclosed to Participant or specifically approved in writing by Participant or by the loan instruments. Agent agrees that it will hold Participant harmless from all claims for brokers' commissions or fees payable to any loan correspondent.

**6.06 Investment Intent.** Participant agrees that it is acquiring its Participation Interests hereunder for its own account for investment and not for purpose of resale.

**6.07 Approvals, Notices.** Participant will not arbitrarily and without good cause withhold any consent or approval required hereunder. All approvals and notices hereunder must be in writing. No party hereto shall be bound by or authorized to rely on any notice or approval not in writing. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served shall be deemed so given and served if sent by United States mail, certified or registered mail, postage and fees prepaid, with return receipt requested. Such notices or demands shall be effective upon the earlier of (a) three (3) business days after mailing, or (b) actual receipt as evidenced by the return receipt, and shall be addressed to Participant at the address set forth herein. Any party may change its address for service of notices by giving notice to all other parties in the manner herein provided.

**6.08 Effect of Article and Section Headings.** The article and section headings are for convenience only and shall not affect the construction of this Agreement.

**6.09 Document Contains Entire Agreement.** This document contains the entire agreement between the parties hereto and cannot be modified in any respect except by an agreement in writing. The invalidity or unenforceability or any portion of this Agreement will in no way affect the balance thereof This Agreement will remain in effect until the loans sold thereunder are liquidated completely.

**6.10 Interpretation.** This Agreement shall be governed by \_\_\_\_\_ law.

Whenever the context requires, all words used in the singular will be construed to have used in the plural, and vice versa, and each gender will include any other gender.

IN WITNESS WHEREOF, each of the following individuals has signed this Agreement having been duly authorized to bind their respective corporation to the terms and conditions contained herein.

AGENT

By \_\_\_\_\_  
(Title)

PARTICIPANT

By \_\_\_\_\_  
(Title)

**EXHIBIT "A"**

**PARTICIPATION CERTIFICATE NO.**

TO: \_\_\_\_\_, PARTICIPANT

This CERTIFIES that the undersigned Agent has received from the Participant the purchase price in the principal sum of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_) and Agent sells, conveys, assigns, transfers, and issues to Participant under the Loan Participation Agreement ("Agreement") dated \_\_\_\_\_, 2001, between \_\_\_\_\_ and \_\_\_\_\_ a \_\_\_\_\_% undivided participation ownership interest (subject to the terms and conditions of said Agreement) in the loans shown in the list following the signature lines.

The combined total outstanding, unpaid principal balance of said loans as of this date is \_\_\_\_\_ and \_\_\_\_\_ No/100 Dollars (\$\_\_\_\_\_).

It is agreed that Participant shall receive as its interest the note rate, as adjusted from time to time, as provided in each Promissory Note less \_\_\_\_\_% (\_\_\_\_\_ basis points), on its pro rata participation ownership interest set forth above in the unpaid principal balance. Agent will be entitled to the remainder of the interest, as provided in the above described Agreement.

Special provisions for this loan are as follows:

a. Section 3.02, Date of Remittance: Remittance of principal, interest and fees (if any) shall be made to Participant by Agent on or before the 5th business day after the 18th of each month via wire transfer. Agent is obligated to advance funds to participant only after receiving a payment from the respective borrower. Payments for the current month received by Agent after the 18th will be included in the following month's remittance.

b. Section 3.03, Prepayment Delivery Time: In the event of a partial prepayment, remittance of principal, interest, and fees (if any) shall be made to Participant by Agent within five (5) business days from the date in which they are received. In the event of a whole prepayment or a final payoff of the loan, remittance of principal, interest, and fees (if any) shall be made to Participant by Agent within five (5) working days after receipt of funds from the loan debtor.

c. Section 3.07A, Late Charge Fees and Default Penalties: Agent agrees to remit to Participant its pro rata share of late charges actually received. Agent will be entitled to the remainder of late charges and all default penalties.

The rights and obligations of the parties to the Participation Certificate are governed by the above-described Agreement which is fully incorporated herein by reference.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001

AGENT

By: \_\_\_\_\_  
(Title)

Loans to Which Participation Agreement Applies

Agent Loan Number	Borrower	Outstanding Principal Balance	Participant's Percentage Interest	Participant's Interest Rate
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