



**ARKANSAS DEVELOPMENT FINANCE AUTHORITY  
NON-RECOURSE LOAN PARTICIPATION AGREEMENT**

Date: \_\_\_\_\_

Originating Bank: \_\_\_\_\_

Borrower(s): Date(s) of Loan(s):

Amount(s) of Loan(s): Due Date(s) of Loan(s):

Interest Rate under Loan Participation: Collateral Security under Loan(s)

Guarantors, Endorsers, Co-Makers:

This Non-Recourse Loan Participation Agreement (the "Agreement") is made and entered into as of the date recited above by and between \_\_\_\_\_ (the "Originating Bank") and the Arkansas Development Finance Authority ("ADFA").

**1. SALE OF LOAN PARTICIPATION INTEREST.** The Originating Bank hereby sells, assigns, transfers and delivers to ADFA a \_\_\_\_\_ percent interest (\_\_\_\_\_% ) in the Originating Bank's ownership rights in and to the indebtedness, promissory note or notes, collateral security and all documents relating to the loan or loans described above (hereinafter, one or more, referred to as the "Loan").

**2. OWNERSHIP OF LOAN PARTICIPATION INTEREST.** The parties hereto agree that ADFA shall be considered for all purposes as the legal and equitable owner of the above percentage interest in the indebtedness, promissory note or notes, collateral security and all documents relating to the Loan, together with all of the rights, privileges and remedies applicable thereto and arising therefrom.

THIS LOAN PARTICIPATION CONSTITUTES A SALE OF A PERCENTAGE OWNERSHIP INTEREST IN THE ABOVE REFERENCED INDEBTEDNESS, NOTE OR NOTES, COLLATERAL SECURITY AND OTHER LOAN DOCUMENTS AND SHALL IN NO WAY BE CONSTRUED AS AN EXTENSION OF CREDIT BY ADFA TO THE ORIGINATING BANK.

**3. AGENT FOR COLLECTION AND SERVICING.**

(A) The Originating Bank shall act as the disclosed agent of ADFA (the "Agency Status") in connection with receipt and collection of ADFA's ownership interest in the Loan and in payments to be made thereunder. In addition, the Originating Bank shall act as the disclosed agent of the ADFA in connection with the continued servicing of the Loan.

(B) The Originating Bank shall exercise the same degree of care and discretion in continuing to service the Loan and in collecting payments thereunder, as the Originating Bank would ordinarily take in servicing the Loan and in collecting payments thereunder solely for its own account.

(C) The Originating Bank may not, however, without the prior written consent and concurrence of ADFA:

- (1) make or consent to any amendments in the terms and conditions of the Loan, or in the terms of the note or notes evidencing the Loan, or in any security agreement or instrument securing the Loan;
- (2) waive or release any claim against any Borrower and/or against any co-maker, guarantor or endorser under the Loan;
- (3) make or consent to any release, substitution or exchange of collateral;
- (4) accelerate payment under the Loan and/or under any note or notes evidencing the Loan;
- (5) commence any type of collection proceeding against the Borrower and/or against any co-maker, guarantor or endorser under the Loan; and/or
- (6) seize, sell, transfer, assign, foreclose or attempt to exercise against any collateral securing the Loan.

(D) ADFA may terminate the Agency Status of the Originating Bank as provided in Section 4 of this Agreement.

(E) ADFA acknowledges that Originating Bank is incurring additional expense and responsibility in servicing the loan, for which it is entitled to be compensated by ADFA in an amount deducted from ADFA's share of the interest on the Loan equivalent to an additional \_\_\_\_\_% interest on ADFA's share of the Loan (the "Servicing Fee").

#### **4. TERMINATION OF AGENCY STATUS.**

(A) The Originating Bank's Agency Status under Section 3 above shall terminate at the election of ADFA upon:

- (1) the insolvency, closing or liquidation of the Originating Bank; or
- (2) if, within the opinion of ADFA, the Originating Bank should fail to comply with its fiduciary and/or other obligations as provided under this Agreement; or
- (3) if Originating Bank has, in the opinion of ADFA, breached any of its warranties and representations herein, or
- (4) if the Originating Bank and ADFA are unable to mutually agree as to a course of action to be taken with regard to collection of the Loan following the Borrower's default or as to any matter listed in Section 3(C) of this Agreement.

(B) Upon termination of the Originating Bank's Agency Status, ADFA shall have the right to exercise one of the following options:

- (1) Notify the Borrower, directing the Borrower to forward principal and interest payments under the Loan directly to ADFA, in sufficient amounts to satisfy ADFA's then percentage ownership interest in the Loan, and the Originating Bank shall join in such notice to the Borrower upon request by ADFA; or,
- (2) In the alternative, ADFA may require the Originating Bank to sell its interest in the Loan to ADFA or to purchase ADFA's interest in the Loan, for the applicable principal balance plus interest to the closing date set by ADFA.

(C) Unless otherwise provided herein, the remaining terms and conditions of this Agreement shall survive the termination of the Originating Bank's Agency Status. Such remaining terms and conditions of this Agreement shall continue to apply until such time as the Loan is either paid in full or ADFA's ownership interest in the Loan is repurchased by the Originating Bank as provided in Section 11 below.

#### **5. REPRESENTATIONS AND WARRANTIES BY ORIGINATING BANK.**

(A) The Originating Bank makes the following representations and warranties to ADFA:

- (1) The Originating Bank has provided ADFA with copies of all relevant credit and other information currently in possession of the Originating Bank that were used by the Originating Bank as a basis of and for its decision to make the Loan to the Borrower;
- (2) The Originating Bank has additionally provided ADFA with copies of the Loan documents that were executed (and/or that are to be executed) by the Borrower, other co-makers, guarantors and endorsers under the Loan;
- (3) The Borrower, as well as all solidarily liable co-makers, guarantors and endorsers under the Loan, has consented to the sale of the above percentage interest in the Loan; and,
- (4) Where the Loan is presently in existence:
  - (a) there are no events of default under the Loan and/or under the Loan documents;
  - (b) the Loan has not been classified on the books of the Originating Bank;
  - (c) the Loan is presently on accrual status; and
  - (d) the terms of the Loan have not previously been re-negotiated as a result of a prior deterioration in the Borrower's financial condition.

(B) The Originating Bank makes no representation or warranties, whether expressed or implied, to ADFA as to the collectibility of the Loan, the continued solvency of the Borrower, or as to the existence, sufficiency or value of the collateral securing the Loan.

(C) The Originating Bank makes nor representations or warranties, whether expressed or implied, to ADFA as to the validity and enforceability of the Loan documents, other than that:

- (1) The Loan documents were validly executed by the Borrower, as well as, to the degree applicable, by the co-makers, guarantors and/or endorsers under the Loan;

- (2) To the extent required under applicable law, the security agreements under the Loan were (and/or will be) properly recorded in order to result in the valid perfection of a security interest on the collateral subject to such agreements; and
- (3) To the extent required under applicable law, the Originating Bank has taken (and/or will take, and/or will continue to take) whatever additional actions may be necessary and proper to validly perfect and maintain a security interest on the collateral securing the Loan.

**6. REPRESENTATIONS AND WARRANTIES BY ADFFA.** ADFFA represents and warrants to the Originating Bank that ADFFA based its decision to purchase a participation ownership interest in the Loan solely upon the ADFFA's own independent evaluation of the Loan, the Borrower's creditworthiness and the existence, value and lien status of the collateral securing the Loan.

**7. ADDITIONAL OBLIGATIONS OF ORIGINATING BANK.**

(A) The Originating Bank shall promptly notify ADFFA should the Originating Bank learn or have any knowledge of the following:

- (1) any change in the financial condition of the Borrower, or of any co-maker, guarantor or endorser under the Loan, which may have a material adverse effect upon continuation of payments under the Loan or the Loan's ultimate collectibility;
- (2) any material change in the value of collateral securing the Loan;
- (3) any change in lien status as affecting the secured collateral;
- (4) any request by the Borrower, or by any co-maker, guarantor or endorser under the Loan, or any change in the terms and conditions of the Loan, or in the terms of any note or notes evidencing the Loan, or in any security agreement or instrument securing the Loan;
- (5) any request by the Borrower, or by any co-maker, guarantor or surety under the Loan, for the release, substitution or exchange of any collateral securing the Loan;
- (6) any request of the Borrower, or by any co-maker, guarantor or endorser under the Loan, for the release of any personal obligations of any such party under the Loan;
- (7) any request by the Originating Bank for any change in the terms and conditions of the Loan, or in the terms of any note/notes evidencing the Loan, or in any security agreement or instrument securing the Loan;
- (8) any request by the Originating Bank for an increase in and/or substitution or exchange of collateral securing the Loan;
- (9) any failure by the Borrower to pay principal and/or interest payments under the Loan when due; and/or
- (10) the occurrence of any other event, which with the passage of time and/or failure to cure would constitute an event of default under the Loan, or under any note or notes evidencing the Loan, or under any security agreement or instrument securing the Loan.

(B) As long as ADFA continues to have an ownership interest in the Loan, the Originating Bank agrees to regularly provide ADFA with complete and current credit related and other information concerning the Borrower, the Loan and the collateral securing the Loan, including without limitation, copies of:

- (1) current financial statements of the Borrower, as well as of all co-makers, guarantors and sureties under the Loan;
- (2) any officer's certificates, financial and other statements and information submitted by the Borrower to the Originating Bank in connection with the Loan;
- (3) the records of the Originating Bank reflecting the amounts and dates of receipt of principal and interest payments under the Loan;
- (4) any information and/or documents in possession of the Originating Bank applicable to the existence, value and lien status of collateral securing the Loan;
- (5) any additional factual information and/or documents in possession of the Originating Bank bearing upon the continuing creditworthiness of the Borrower.

**8. APPLICATION OF PAYMENTS.** (check (A) or (B) as applicable)

G (A) The Originating Bank and ADFA shall each share in all principal and interest payments and other collections under the Loan in proportion to their respective percentage ownership interest in the Loan (with appropriate provisions made for the payment to Originating Lender of the Servicing Fee called for by Section 3(E) of this Agreement from ADFA's share of the interest paid by Borrower to the Originating Bank and ADFA).

G (B) All principal payments under the Loan shall be first applied towards payment of the ADFA's ownership interest in the Loan, until such time as ADFA's ownership interest is paid in full. However, if there should be an event of default under the Loan (as provided under the Loan documents), the Originating Bank and ADFA shall thereafter each share in subsequent principal and interest payments and/or collections in proportion to their respective percentage ownership interest in the Loan as existing at time of default (with appropriate provisions made for the payment to Originating Lender of the Servicing Fee called for by Section 3(E) of this Agreement from ADFA's share of the interest paid by Borrower to the Originating Bank and ADFA).

(C) Principal and interest payments and/or other amounts collected by the Originating Bank under the Loan shall be held in trust for the benefit of ADFA, until such funds, representing the ADFA's ownership interest in such payment under (A) or (B) above, are actually paid to and received by ADFA.

**9. Additional Loans by Originating Bank.**

(A) ADFA recognizes and agrees that the Originating Bank may have other existing loans and in the future may make additional loans to the Borrower and/or to other co-makers, guarantors and sureties under the Loan, which other and/or additional loans may not be participated to ADFA.

(B) ADFA further recognizes and agrees that the Originating Bank shall have no obligation to attempt to collect payments under the Loan in preference and priority over the collection and/or enforcement or any other and/or additional loans by the Originating Bank as referenced in (A) above.

(C) The Originating Bank, however, agrees that the proceeds of all collateral directly securing repayment of the Loan, shall be applied first to the payment of the Loan as provided in Section 8 above. Any excess proceeds may be applied by the Originating Bank to the payment of any other and/or additional loans then owing to the Originating Bank, that may be indirectly secured by such collateral as a result of the inclusion of “Cross-collateralization,” or “Mother Hubbard Clauses” provisions in the security agreement executed in connection with the Loan in favor of the Originating Bank.

(D) The parties hereto further agree that ADFA shall have no interest in any other property of the Borrower or of any co-maker, guarantor or endorser, taken as security for any other and/or additional loan or loans made by the Originating Bank, or acquired by the Originating Bank, or in any property not or hereafter in the possession or control of the Originating Bank, which other property may indirectly secure repayment of the Loan by reason of “Cross-collateralization,” or “Mother Hubbard Clauses”; except that, if any such other property or the proceeds thereof is applied to the reduction of the Loan, then ADFA shall be entitled to share in such an application of payment as provided in Section 8 of this Agreement.

#### **10. DEFAULT.**

(A) Upon the occurrence of any event of default under the Loan, the Originating Bank and ADFA shall consult between themselves as to a mutually agreed upon course of action to pursue in order to collect the amounts then owed under the Loan.

(B) If ADFA and the Originating Bank cannot mutually agree upon action or actions to the satisfaction of ADFA, the parties hereto unconditionally agree that either the Originating Bank or ADFA may then elect, upon written notice to the other, to accelerate payment under the Loan and/or under any note or notes evidencing the Loan, and to institute such legal proceedings as are necessary and appropriate, within the sole opinion of the instituting bank, to collect the indebtedness then due under the Loan, to enforce the security therefore, and to protect and preserve the respective rights and interest of the parties, in the name of the Originating Bank, but Originating Bank and ADFA shall each bear the costs and expenses of such proceedings in proportion to their respective percentage interest in the loan existing at the time of default. Institution of proceedings under this Section 10(B) shall not terminate ADFA’s rights to proceed under Section 4(C), or Originating Lender’s rights to proceed under Section 11.

(C) In the event that ADFA elects to accelerate payment of the Loan and to institute legal proceedings as provided in (B) above, or upon the Originating Bank’s failure, insolvency and/or closing:

- (1) The Originating Bank unconditionally agrees to immediately forward the original Loan documents (including, without limitation, the original of the Borrower’s note or notes evidencing the Loan and shall security agreements

and instruments therefor) to ADFA, together with such other documents, files and records as may be necessary, within the opinion of ADFA and its counsel, to permit ADFA to institute appropriate collection and/or foreclosure proceedings under the Loan and/or against the collateral securing the Loan.

- (2) The Originating Bank shall further turn over any secured collateral in its possession to ADFA.
- (3) The Originating Bank additionally agrees to join in any demand letter or other communications forwarded by ADFA to the Borrower and/or to any co-makers, guarantors or endorsers under the Loan.
- (4) The Originating Bank further agrees to execute such additional documents in favor of ADFA as may be deemed to be necessary and proper by ADFA and its counsel to permit the ADFA to foreclose against collateral securing the Loan under applicable state law procedures.

#### **11. RIGHT TO REPURCHASE.**

(A) The Originating Bank shall have the right at its sole and exclusive option, to repurchase ADFA's ownership interest in the loan at any time. The purchase price shall be equal to ADFA's principal interest in the Loan, as then outstanding, plus accrued interest at the above rate through date of repurchase. Nothing under this Section 11 shall, however, be construed as obligating the Originating Bank to repurchase the ADFA's ownership interest in the Loan, and nothing hereunder shall be construed as granting ADFA the right to demand that the Originating Bank repurchase such an ownership interest, absent a default by the Borrower and an election by ADFA under Section 4(C).

(B) The sale of the loan participation under this Agreement shall be on a "NON-RECOURSE" basis, and the right of repurchase provisions under (A) above shall be construed as a "call" rather than a "put".

**12. NOTICE TO BORROWER.** The Borrower and all co-makers, guarantors and endorsers under the Loan, have been (and/or will be) notified of the sale of participation interest in the Loan to ADFA.

#### **13. MISCELLANEOUS.**

(A) ADFA may not sell, pledge, assign, sub-participate or otherwise transfer its percentage ownership interest under the Loan without first obtaining the prior written consent of the Originating Bank.

(B) This Agreement shall be governed and construed under the laws of the State Arkansas.

(C) This Agreement shall be binding upon the parties hereto, as well as their respective legal representatives, successors and assigns.

(D) All notices under this Agreement shall be in writing and mailed to the respective parties at the addresses given herein.

(E) Should any provision of this Agreement be deemed invalid or unenforceable a contrary to applicable law, the parties hereto agree that such provision shall automatically be deemed to be reformed as to be consistent with applicable law.

**ORIGINATING BANK**

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

**ADFA**

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



**EXHIBIT "A"**  
**TO NOTE AMONG**

**AS BORROWER**  
**AND**

\_\_\_\_\_ **BANK**  
**AS LENDER**

Interest shall accrue on so much of the principal as is advanced and outstanding as follows:

From the date hereof until the later of (i) the date that all funds have been disbursed and (ii) the Participation Agreement between Lender and ADFA has been consummated (the "Triggering Event"), the interest rate shall be a fixed rate of \_\_\_\_\_ percent (\_\_\_\_\_% ) per annum.

Effective on the date of the Triggering Event, the interest rate charged on one half (1/2) of the outstanding principal balance shall be a fixed rate of \_\_\_\_\_ percent (\_\_\_\_\_% ).

The other half of the outstanding principal shall bear interest for the entire term of the loan at the rate of \_\_\_\_\_ percent (\_\_\_\_\_% ) per annum.

On the date of any change in the interest rate, Lender has the right to raise or lower the monthly payment to the amount necessary to fully amortize the loan at maturity; provided however, no adjustment in the payment amount shall be construed in such a manner as to result in total payments which would include a rate of interest in excess of that permitted by law, with each such installment to be applied, when received, first to interest at the rate then applicable, and the balance if any, to principal.

BORROWER:

BY: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_