

## LOAN AGREEMENT

THIS LOAN AGREEMENT, effective [Insert Effective Date Here], is made by and between [Insert Credit Union Name Here], [Insert Credit Union Street Address, City, State Zip Code Here] (Borrower) and the Community Development Revolving Loan Fund (the Fund) for credit unions, administered by National Credit Union Administration (NCUA), an independent federal regulatory agency, 1775 Duke Street, Alexandria, Virginia 22314.

### WITNESSETH:

WHEREAS, Borrower is a credit union primarily engaged in providing services to members with low income and qualifies for low-income designation, within the meaning of NCUA's rules governing low-income designation (12 CFR §701.34);

WHEREAS, Borrower has requested financial assistance from the Fund in the form of a loan and the purpose of such loan is to provide basic financial and related services to residents in Borrower's community, enhance Borrower's capacity to better serve its members and the community in which Borrower operates, and/or respond to an emergency;

WHEREAS, NCUA, in its capacity as administrator of the Fund, has reviewed the application and has determined to provide financial assistance to Borrower in the form of a loan from the Fund; and

WHEREAS, Borrower wishes to borrow and the Fund wishes to lend, in accordance with the terms and conditions in this Loan Agreement,

NOW, THEREFORE, in consideration of the mutual promises, and other good and valuable consideration, the receipt and sufficiency of which they acknowledge, Borrower and the Fund, each intending to be bound, agree as follows:

- 1. Promissory Note.** Contemporaneous with the execution of this Loan Agreement, Borrower has executed a Promissory Note evidencing its indebtedness to the Fund and reflecting its obligation to repay the indebtedness in accordance with its terms. In this Loan Agreement, the indebtedness evidenced by Borrower's Promissory Note is referred to as the "Loan."
- 2. Recording the Loan as a Nonmember Deposit Account** ( *Check here if loan to be recorded nonmember deposit; otherwise, loan shall be recorded as a note payable*). The Fund will place all of the Loan proceeds into a Nonmember Deposit Account maintained with Borrower, and Borrower agrees to open an account on its books reflecting the amount of funds placed on deposit, using its standard opening procedures and disclosures, including issuance of any share certificates typically used by the Borrower to reflect and acknowledge its obligation to the account holder. Any funds placed with Borrower in the form of a share account will not earn dividends. Borrower must make payments of accrued interest directly to the Fund in accordance with the repayment schedule in the Promissory Note. Borrower agrees to reduce the principal balance of the share account as carried on its books to correspond with repayments of principal made by Borrower under the Promissory Note.

**3. Representations and Warranties.** Borrower represents and warrants to NCUA that:

- a. If a state-chartered credit union, it is duly organized and existing in good standing under the laws of the jurisdiction of its incorporation or organization; has obtained and is qualified to retain a designation from NCUA as to its low-income status, as set forth in 12 CFR §701.34; is duly qualified to do business and is in good standing in every jurisdiction where the nature or extent of its business as a foreign corporation or other entity; has obtained all licenses and permits and has filed all registrations necessary for the lawful operation of its business; and has the corporate power and authority to own its properties and carry on its business as now being conducted.
- b. The Promissory Note and this Loan Agreement have been properly authorized by all requisite corporate actions of Borrower and have been duly executed and delivered on behalf of Borrower as evidenced by the credit union's board resolution reflecting board action authorizing the signing of this Loan Agreement.
- c. No consent of any other person and no consent, permit, license, approval or authorization of, or registration, declaration or filing with or notice to any governmental authority is required in connection with the execution, delivery, or performance by Borrower, or the validity or enforceability against Borrower, of the Promissory Note and this Loan Agreement.
- d. Neither the Promissory Note, this Loan Agreement, nor the performance of Borrower's obligation violates any provision of any law, rule, or regulation or of any order, judgment, award or decree of any governmental authority, the charter documents of Borrower, or any security issued by Borrower or any agreement, indenture, or undertaking to which Borrower is a party or by which Borrower's property is bound, affected, or would constitute a default.
- e. The Promissory Note and this Loan Agreement collectively constitute the legal obligation of Borrower, enforceable against Borrower in accordance with their respective terms, except to the extent that their enforceability against Borrower may be limited by NCUA, bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or similar laws affecting the enforceability of creditors' rights generally or by equitable principles of general application.
- f. To the best of the Borrower's knowledge, there is no pending or threatening action, suit, investigation, or proceeding affecting Borrower by or before any governmental authority which, if adversely determined, would have a materially adverse effect on Borrower's ability to perform its obligation hereunder. Borrower is not in default under any applicable statute, rule order, decree, or regulation of any governmental authority.
- g. Borrower is not in default in any respect concerning the payment or performance of any obligation for monies borrowed or under any mortgage, indenture, lease, contract, or other

agreement or undertaking to which Borrower is a party or by which Borrower may be bound or affected and no Event of Default or Default has occurred and is continuing; Borrower is not in default under any order, award or decree of any governmental authority binding upon or affecting Borrower or by which Borrower may be bound or affected, and no such order, award, or decree would adversely affect the ability of Borrower to carry on its business as currently conducted.

- h. Borrower will pay, when due, all principal, interest and other charges and liabilities in accordance with the provisions of the Promissory Note.
- i. Without the prior written consent of the Fund, Borrower will not take or permit to be taken any action that might hinder, obstruct or delay the Fund in the exercise of any remedy the Fund has under this Loan Agreement. Borrower agrees to maintain in good standing its corporate existence and its right to transact business, and agrees to obtain and maintain all licenses, permits, and registrations necessary for the conduct of its business.
- j. In accordance with Part 705 of NCUA's regulations, the Borrower has requested financial assistance from the Fund in the form of a loan for the following specific purpose(s): [Enter the purpose/use of funds for this credit union here]

#### **4. Reporting and Recordkeeping.**

- a. Borrower will provide a report to NCUA at the time of, and together with, each periodic payment due under the Promissory Note, addressing the following topics:
  - i. the use of Loan proceeds, including how successful Borrower has been in implementing any new programs and initiatives;
  - ii. the impact such programs have had on the membership and the community served by Borrower, including how such impact is measured; and
  - iii. any obstacles encountered that affect Borrower's ability to accomplish the objectives identified in its Loan application, and what plans Borrower has to overcome the obstacles.
- b. Upon the Fund's request, Borrower will promptly deliver to the Fund such other information about the business, operations, revenues, financial condition, property, or business prospects of Borrower as the Fund may, from time to time, reasonably request to permit the Fund to maintain or perfect its security interest in any collateral and to fully effectuate the purpose of this Loan Agreement.
- c. Borrower will, promptly upon obtaining knowledge or notice thereof, give notice to the Fund of any of the following:

- i. a breach of any of the covenants in the Loan Agreement;
- ii. an Event of Default or a Default;
- iii. a default under any other agreement for borrowed money; or
- iv. casualty to any collateral or any other force majeure, or any litigation, investigation or other proceeding against or involving Borrower.

**5. Matching Funds** ( *Check here if required*). In accordance with Part 705 of NCUA's regulations, the Borrower agrees to increase its share deposits in an amount equal to the Loan amount within one year of the approval of the Loan application and maintain the increase in the total amount of share deposits for the duration of the Loan.

- a. Borrower's failure to generate the required matching funds within one year of the approval of the Loan will result in the reduction of the Loan proportionate to the amount of the match actually generated. Payment of any additional funds initially approved will be limited as appropriate to reflect the revised amount of the Loan approved and any funds already advanced to Borrower in excess of the revised amount of the Loan must be repaid immediately to NCUA. Failure to repay such funds to NCUA upon demand will result in the default of the entire Loan.
- b. Borrower may increase member share deposits, which will be credited as a two to one match, and/or nonmember deposits. Matching funds must be nongovernmental funds. If Borrower increases nonmember share accounts to generate the required matching funds, such nonmember accounts are not subject to the limitations contained in 12CFR §701.32. Borrower understands that, upon termination of the Loan, the nonmember share account deposits accepted to meet matching requirement are subject to 12 CFR §701.32.

**6. Security Agreement** ( *Check here if required*).

The Borrower will complete, sign, and return the Security Agreement. The Fund requires a perfected lien on the credit union's assets of at least 110 percent of the outstanding loan amount. NCUA shall, at any time, require additional collateralization to maintain the net value of collateralized assets at 110 percent of the outstanding loan balances or require the credit union to immediately reduce the outstanding loan balance plus accrued interest to the fair market value of the collateral securing the loan. Failure to maintain a 110 percent collateralization level is considered a default under the terms of the promissory note and the full outstanding loan balance plus accrued interest will be immediately due and payable.

**7. Examination by NCUA.** ( *Check here if required*). In accordance with §705.8 of NCUA's regulations, the Borrower agrees to be subject to examination by, and for this purpose shall make its books and records accessible to, NCUA.

- a. Borrower shall be subject to examination by NCUA to the same extent as a credit union federally insured by NCUA.
- b. Borrower shall be subject to the provisions of 12 U.S.C. §1786 as if Borrower were a credit union federally insured by NCUA.
- c. Borrower shall make copies of its state examination reports available to NCUA.

**8. Default.** Any one or more of the following is an event of default under this Loan Agreement (an “Event of Default”) and, after giving any applicable notice or the expiration of any applicable period of time, is a default under this Loan Agreement (a “Default”):

- a. Nonpayment of any principal or interest when due with respect to the Promissory Note, whether at maturity or otherwise.
- b. Any representation or warranty Borrower makes in any agreement with the Fund, including but not limited to this Loan Agreement, to which Borrower is a party or by which it is bound, or any statement or representation Borrower makes in any certificate, report or opinion, or other document delivered pursuant thereto, is discovered to have been false in any material respect when made.
- c. Breach by Borrower of any term or provision of this Loan Agreement that is not remedied or waived within thirty (30) days after notice of such breach has been given to Borrower.
- d. Borrower: (i) fails to pay, or admits in writing its inability to pay, its debts as they become due, or otherwise becomes insolvent however evidenced; (ii) files a petition or applies to any governmental authority for the appointment of any receiver, conservator, or liquidating agent; (iii) has commenced against it any proceeding for the appointment of any receiver, conservator, or liquidating agent, or by any act indicates its consent to, approval of, or acquiescence in any such proceeding or appointment; or (iv) takes any corporate action to authorize any of the foregoing.
- e. Borrower’s deteriorated financial condition. Determination of default due to Borrower’s financial condition will be made by NCUA with consideration of Borrower’s long term financial viability. Primary factors triggering default may include, but are not limited to, a CAMEL rating downgrade or unfavorable notification from a NCUA regional office. NCUA may also consider indicators that Borrower is a candidate for merger, a purchase and assumption transaction, or conservatorship. NCUA may also consider additional information obtained through the examination process and data contained in Call Reports.

- 9. Remedies.** Upon any Default, the Fund may declare any or all liabilities secured by this Loan Agreement immediately due and payable without further formal action or notice to Borrower.
- a. The Fund may take possession of the Nonmember Deposit Account without legal process wherever it may be found and Borrower agrees to assist in the recovery of and make available the Nonmember Deposit Account to the Fund, which the Fund may sell or dispose of in any commercially reasonable manner.
  - b. The Fund may notify those indebted to Borrower, and whose indebtedness has been pledged to the Fund, to make payment directly to Fund. The proceeds from the Nonmember Deposit Account shall be applied first to the expenses of reasonable attorney's fees, and thereafter to the payment of all principal, interest and other obligations due under this Loan Agreement or any other agreement with the Fund. Any surplus shall be returned to Borrower, and Borrower shall be liable for any deficiency.
  - c. Borrower agrees to pay or reimburse the Fund for all of its reasonable costs and expenses incurred in connection with the enforcement or preservation of any of its rights under this Loan Agreement, including without limitation, court costs, filing fees, taxes, and other expenses.
- 10. Waiver.** The Fund may delay enforcing any of its rights under the Promissory Note and this Loan Agreement but any such delay is not a waiver. With or without notice, the obligations of Borrower to the Fund will not in any manner be discharged, impaired or affected by:
- a. Any delay in acting or failure to act by the Fund with regard to pursuing any remedy against Borrower;
  - b. Any waiver, consent, action or acquiescence by the Fund at any time with respect to any Default under the Promissory Note of this Loan Agreement; or
  - c. Any extension of any of Borrower's obligations under the Promissory Note or this Loan Agreement. No waiver of any Default is a waiver of any other Default or of the same Default on future occasions.
- 11. Construction and Effect.** This Loan Agreement has been delivered at the state of [Enter state of Credit Union] and will be construed in accordance with the Uniform Commercial Code, Article 9 and other applicable federal laws and regulations and laws of [Enter state of Credit Union]. Whenever possible each provision of this note and agreement will be interpreted so as to be effective and valid under applicable law; however, if any provision is prohibited by or invalid under applicable law, such provision will be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of the provision or the remaining provisions of the note and agreement. This Loan Agreement creates a continuing security interest in the Nonmember Deposit Account and:

- a. remains in full force and effect until payment in full of the liabilities;
- b. remains in full force and effect regardless of a termination or modification of any other agreement with NCUA or the Fund; and
- c. is binding upon and inure to the benefit of the parties and all future holders of the Promissory Note or other agreement with the Fund, and their respective successors and assigns.

IN WITNESS WHEREOF, Borrower and the Fund, by their authorized representatives, have executed this Loan Agreement.

[Enter name of Credit Union Here]

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

Name: \_\_\_\_\_

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

NATIONAL CREDIT UNION ADMINISTRATION COMMUNITY DEVELOPMENT REVOLVING  
LOAN FUND

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

Name: \_\_\_\_\_

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