



**WITNESSETH:**

WHEREAS, WHEDA is authorized pursuant to Chapter 234 of Wisconsin Statutes to establish and administer the Agricultural Production Loan Guarantee Program which is known as the Credit Relief Outreach Program (“CROP”);

WHEREAS, WHEDA has described CROP, including the requirements which must be met for a loan to qualify for CROP, in its Lender Manual, as amended and supplemented from time to time by WHEDA; and

WHEREAS, the Lender wishes to make and WHEDA wishes to guarantee loans which qualify for CROP in accordance with Chapter 234 of Wisconsin Statutes, the Lender Manual and the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises and the promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WHEDA and the Lender agree as follows:

**ARTICLE I – PARTICIPATION IN CROP**

1.1 Definitions. Capitalized terms used herein and not otherwise defined have the meanings set forth in the Lender Manual. For purposes of this Agreement, the term “Lender” includes any branch identified on the Branch Rider attached hereto as Exhibit A.

1.2 Commitment. Lender shall, as described herein and in the Lender Manual, originate, service and, to the extent reasonably possible, collect payment for Agricultural Production Loans which qualify for CROP, as reasonably determined by Lender and confirmed by WHEDA in accordance with the procedures set forth in the Lender Manual (the “Loans”). WHEDA hereby certifies to Lender that the Lender Manual sets forth in reasonable detail the requirements for an Agricultural Production Loan to qualify for CROP. WHEDA hereby guarantees, as described herein and in the Lender Manual, for each Loan, the repayment to Lender of up to ninety percent (90%) of the outstanding principal amount, calculated as set forth in the Lender Manual, of all Loans for which it receives a written claim from Lender and is satisfied, in its sole discretion, that the Loan is qualified for CROP and that Lender has made every reasonable effort to collect the Loan and any deficiency judgment against the Borrower.

1.3 Limitation of WHEDA’s Commitment. Lender acknowledges that other lenders and WHEDA have or will enter into agreements similar to this Agreement. WHEDA can only guarantee an aggregate principal amount of Loans originated by Lender which, when added to the aggregate principal amount of the Guaranteed Loans originated by other lenders and for other guarantee products authorized by Wis. Stats. Chapter 234 does not exceed the maximum amount authorized by law. WHEDA shall pay to Lender on its guarantee claims only an amount which, when added to the aggregate principal amount of such guarantee claims made by other lenders equals the amount WHEDA is authorized by law to pay for such claims. Should the aggregate of the guarantee claims from all lenders exceed the amount available to pay such claims, WHEDA shall pay

lenders the amount available in the order in which claims are received, and request the Legislature to appropriate additional funds as needed. In no event shall WHEDA's obligation to all lenders with guarantee claims exceed the monies appropriated by the Legislature.

1.4 Commitment Commencement Date. Lender may commence to originate Loans pursuant to this Agreement as of the date this Agreement is executed by both Lender and WHEDA.

1.5 Lender Number. Lender shall provide to WHEDA in all correspondence, telephone conversations and conferences, its "Lender Number" which appears on the first page of this Agreement or on the Branch Rider attached hereto as Exhibit A.

## ARTICLE II – LENDER REQUIREMENTS

2.1 Consumer Laws. Lender shall have the sole responsibility for ensuring full compliance with any and all current and future federal and Wisconsin laws applicable to the Loan transaction, and shall indemnify WHEDA from any loss or liability resulting or arising from any failure by Lender to comply with such law.

2.2 Loan Documentation and Collateral Perfection. Lender shall have the sole responsibility for ensuring that all documents evidencing and securing the Loan are fully and accurately prepared/completed, properly authorized and fully executed by the Borrower in accordance with the Lender's normal prudent loan documentation procedures and the requirements contained in the Lender Manual. In addition, Lender shall have the sole responsibility for properly perfecting the Lender's security interest in the collateral securing the Loan. WHEDA is entitled at any time, after reasonable notice to Lender, to examine and make copies of all Loan Documents, loan repayment records and any other documents or records held or maintained by Lender which relate to the Loan.

2.3 Lender Fees. Lender shall be entitled to charge interest and fees on the Loan at a rate not to exceed the equivalent of a per annum interest rate established by WHEDA and in effect at the time Lender originates the Loan, non-compounded, on the daily outstanding principal amount of the Loan from the date of the Loan note until the maturity date. All application fees, origination fees and other loan fees charged by Lender shall be included in determining the per annum rate of interest on the Loan, except UCC financing statement filing fees and/or other filing/recording fees which are incurred by Lender in connection with perfecting Lender's security interest in the collateral securing the Loan and for which Borrower is charged at Loan closing shall be excluded from the determination of the per annum interest rate on the Loan.

2.4 Loan Collection. Lender shall not accept from WHEDA any payment for Loan guarantee claims prior to fully and accurately disclosing to WHEDA all amounts collected, or to be collected, in repayment of the Loan, or prior to making every reasonable effort to collect payment for the Loan and from the Borrower, including, but not limited to, foreclosing Lender's security interest in any collateral for the Loan, enforcing any

deficiency judgment against the Borrower and all the Borrower's assets, and applying the same toward the Loan.

2.5 Application of Funds Collected. Notwithstanding the terms of any promissory note evidencing a Loan or any other loan agreement between Borrower and Lender with respect to a Loan, any and all funds collected by Lender from the Borrower or guarantor of a non-performing Loan shall be applied by Lender first to the payment of the outstanding principal amount of the Loan, second to the payment of accrued and unpaid interest on the Loan (maximum of 90 days), and then to the extent any funds remain, to the payment of other loans or amounts owing by the Borrower to Lender.

2.6 Lender's Insurance. Lender shall maintain throughout the term of this Agreement, at Lender's expense, a fidelity bond, fire and extended coverage insurance on Lender's office, theft insurance, forgery insurance, and errors and omissions insurance. Such bonds and insurance policies shall be in amounts reasonably calculated to protect WHEDA from loss under this Agreement.

2.7 Lender's Representations and Warranties. Lender hereby makes the following representations and warranties for WHEDA's reliance:

(a) Lender is duly organized and validly existing and in good standing or active status under the laws of the jurisdiction under which it is organized, and is qualified to do business in the State of Wisconsin;

(b) Lender is duly authorized by all necessary corporate actions to enter into this Agreement. Upon execution, this Agreement will be a valid and binding agreement by Lender, enforceable in accordance with its terms, and will not constitute a violation of any law or any requirement imposed by any government authority or regulatory body;

(c) Lender is not under any cease and desist order or any other order of a similar nature which would in any way restrict Lender from complying with any and all terms of this Agreement;

(d) Each Loan guaranteed by WHEDA pursuant to the terms of this Agreement shall conform in all respects to each and every requirement and procedure set forth in this Agreement and the Lender Manual;

(e) Each representation and warranty contained in the Lender Warranty (Form 7) provided for in the Lender Manual, is incorporated herein by reference and made a part hereof with respect to each Loan guaranteed pursuant to the terms of this Agreement; and

(f) Each of the foregoing representations and warranties of Lender are continuing and shall be deemed to have been made and shall be true and correct as of the date each Agricultural Production Loan is approved for CROP, and WHEDA makes any Loan guarantee payments pursuant to the terms of this Agreement.

2.8 Lender's Indemnification Obligations. Except to the extent caused by WHEDA's own negligence, the Lender shall indemnify and hold harmless WHEDA and its agents, employees, officers and directors from and against all claims, damages, losses and expenses, including reasonable attorney's fees, arising in any way out of, in connection with or resulting from this Agreement, the Lender's Manual, and the Loan Documents. The provisions of this Section 2.08 shall survive the termination of this Agreement.

2.9 Lender's Stipulation. In connection with any CROP guarantee payment made by WHEDA, Lender agrees (a) to respond to all future Loan status report requests made by WHEDA, and (b) to forward to WHEDA the appropriate percentage (80% or 90%) of any future payments made by the Borrower (after WHEDA has made its guarantee payment to Lender). The provisions of this Section 2.09 shall survive the termination of this Agreement.

2.10 Change in Ownership of Lender. Lender shall provide prior written notice to WHEDA of any (a) sale of all or substantially all of Lender's assets, (b) any merger, consolidation, or other transaction which results in a change of ownership or control of Lender, and/or (c) any change in servicing procedures or personnel responsible for the servicing of Loans included in CROP.

### **ARTICLE III – TERMINATION; REMEDIES**

#### 3.1 Termination of Agreement.

(a) Termination for Cause. If, in the sole judgment of WHEDA, Lender has failed to: (1) originate Loans pursuant to the terms of this Agreement and the Lender Manual; (2) exercise proper quality control, documentation and/or judgment in originating, processing or closing Loans; (3) service or collect Loans pursuant to the terms of this Agreement and the Lender Manual; or (4) perform any duty or obligation of Lender to be performed pursuant to the terms of this Agreement or the Lender Manual, WHEDA may terminate this Agreement immediately upon the giving of written notice to Lender. Upon the termination of this Agreement for cause, WHEDA's guarantee of any outstanding Loans originated by Lender shall be revoked and invalidated and of no further force or effect.

(b) Termination for Bankruptcy/Insolvency. This Agreement shall terminate immediately upon the statutory insolvency or bankruptcy of Lender and WHEDA's guarantee of any outstanding Loans originated by Lender shall be revoked and invalidated and of no further force or effect.

(c) New Loans Not Eligible for CROP. Without cause and for any reason, upon thirty (30) days prior written notice to Lender, any new Loans originated by Lender after the date of WHEDA's notice will no longer be eligible for inclusion in CROP. Notwithstanding the foregoing, WHEDA's guarantee of any outstanding Loans originated by Lender shall remain in effect and this Agreement

shall remain in effect and continue to govern the rights and obligations of Lender and WHEDA with respect to such outstanding Loans.

3.2 Remedies. Upon termination of this Agreement for cause, WHEDA shall be entitled to all remedies available at law or in equity, including but not limited to: the right to seek equitable relief by way of injunction to prevent the breach or threatened breach of any of the provisions of this Agreement, or require specific performance thereof; and the right to seek damages, including consequential damages and attorney's fees. Termination of this Agreement shall not diminish the rights of WHEDA under this Agreement which are intended to survive termination of this Agreement, including, without limitation, WHEDA's rights under Section 2.08 and Section 2.09 hereof. All remedies set forth herein shall be cumulative, and the exercise by WHEDA of any one or more of them shall not in any way alter or diminish WHEDA's right to any other remedy provided herein or by law or equity.

#### **ARTICLE IV – MISCELLANEOUS PROVISIONS**

4.1 Incorporation of Lender Manual. The Lender Manual, as it may be amended from time to time, all exhibits, certificates, affidavits, warranties and other documents required by the Lender Manual, are specifically incorporated into this Agreement as if fully set forth herein.

4.2 Time is of the Essence. Time is of the essence hereof.

4.3 Modification. No provision of this Agreement or of the Lender Manual may be waived or modified unless such waiver or modification is made in a signed writing; provided, however, that WHEDA may amend or supplement the Lender Manual by providing written notice of such amendment or supplement to Lender. Amendments or supplements shall become effective ten (10) business days after the date provided unless otherwise stated in the notice.

4.4 Applicable Law. This Agreement is made and entered into in the State of Wisconsin and all questions as to the validity, construction, performance or enforcement thereof shall be governed by the laws of the State of Wisconsin.

4.5 Severability. The invalidity of any provision of this Agreement or of the Lender Manual shall in no way affect any other provision of this Agreement or the Lender Manual, which shall remain in full force and effect.

4.6 Assignment. Lender shall not assign any of its rights under this Agreement to any other person without the written consent of WHEDA.

4.7 Binding Effect. This Agreement shall bind and inure to the benefit of WHEDA and Lender, and their respective successors-in-interest and permitted assigns. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all such counterparts shall constitute one in the same Agreement. For purposes of this Agreement and any documents delivered in connection herewith,

electronic signature pages shall be binding on the parties and have the same force and effect as signed, original signature pages.

4.8 Notice. All notices, tenders or demands made pursuant to this Agreement or the Lender Manual shall be made in writing and personally delivered or mailed to Lender at the address set forth on the first page of this Agreement and to WHEDA at the address set forth below.

Attn: CROP  
Wisconsin Housing and Economic Development Authority  
Post Office Box 1728  
Madison, Wisconsin 53701-1728

4.9 Prior PLA(s). This Agreement supersedes and replaces any and all prior CROP Participating Lender's Agreement(s) between Lender and WHEDA ("Prior PLA").

4.10 Loans Advanced Prior to Effective Date. Notwithstanding the provisions of Section 4.09 hereof, any Loans originated by Lender and guaranteed by WHEDA prior to the Effective Date (as such term is defined in the Lender Manual effective \_\_\_\_\_, 2014) shall remain subject to the terms and provisions of the 2013 CROP Lender Manual and the Prior PLA between Lender and WHEDA.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

**LENDER:**

**WHEDA:**

**WISCONSIN HOUSING AND  
ECONOMIC DEVELOPMENT  
AUTHORITY**

[INSERT NAME OF LENDER]

\_\_\_\_\_  
Chief Executive Officer Signature

\_\_\_\_\_  
WHEDA Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

**EXHIBIT A**

Branch Rider

\_\_\_\_\_  
Name of Parent Lender

Parent WHEDA Lender Number: \_\_\_\_\_

Please include information set forth below for each Branch:

**Branch 1**

Name of Branch: \_\_\_\_\_

Street Address: \_\_\_\_\_

Mailing Address of Branch: \_\_\_\_\_

Branch Contact Name: \_\_\_\_\_

Branch Contact Telephone Number: \_\_\_\_\_

Branch Contact E-mail Address: \_\_\_\_\_

Branch WHEDA Lender Number: \_\_\_\_\_

**Branch 2**

Name of Branch: \_\_\_\_\_

Street Address: \_\_\_\_\_

Mailing Address of Branch: \_\_\_\_\_

Branch Contact Name: \_\_\_\_\_

Branch Contact Telephone Number: \_\_\_\_\_

Branch Contact E-mail Address: \_\_\_\_\_

Branch WHEDA Lender Number: \_\_\_\_\_

Additional pages may be added if necessary.