

## **Rural Development Finance Corporation Meat Processing/Food Supply Revolving Loan Fund Plan**

This program is made possible through a United States Department of Agriculture Meat Processing Intermediary Lending Program Grant.

Rural Development Finance Corporation (RDFC) is a nonprofit rural development corporation that services all North Dakota communities/areas in North Dakota. RDFC is operated by the state's rural electric and telecommunications cooperatives. In business since 1994, the corporation's revolving loan fund has grown to over \$8.4 million. The corporation recognizes the needs and struggles currently faced by rural businesses. As industries consolidate for efficiencies, rural businesses are challenged to meet volume discounts from supplies, have fewer customers for cash flow and face appraisal gaps, meaning their properties are appraised at a value lower than the cost of construction due to having fewer opportunities to sell the business should they default. RDFC has been actively involved in providing technical assistance and financing to emerging or expanding meat plants in North Dakota to improve management tools for local producers and improve access to locally produced meats (beef, pork, lamb, and bison) for local retailers, schools, and consumers. This lower interest financing reduces the debt load of the business, helping them compete with the larger meat packers in the nation.

The RDFC revolving loan fund will complement existing public and private sources of financing for rural development. Due to limited financial resources from existing rural communities and lending limits of small rural banks, the established fund will complement economic development immensely. For the state's ranchers, regional, small meat processing plants are considered a necessary management tool for their operations, giving them convenient, local processing options for their herd. For rural communities that depend on livestock as a part of their economy, the meat plants provide jobs and bring people to their main streets to bank, shop and eat. Prior to the pandemic, North Dakota's small retail grocery stores began losing suppliers and during the pandemic over half of the state's school districts temporarily lost their supplier and still struggle to keep supplied. These emerging and expanding small meat plants are stepping up to meet these supply chain issues.

RDFC seeks to use USDA (United States Department of Agriculture) MPILP (Meat and Poultry Intermediary Lending Program) grant funds to establish a new revolving loan fund program to enhance the financing and sustainability of small, regional meat processing plants in North Dakota. The initial funds will be targeted for the projects listed in Section 3 of the application. These projects have a strong potential of moving forward with construction/expansion within the next three years.

As the fund revolves, RDFC intends to invest in middle-of-the food-supply chain businesses, focusing primarily on value-added processing and distribution. North Dakota's rural communities are heavily dependent on agriculture with abundant opportunities to invest in further processing of the crops produced here. In addition, because it is sparsely populated, the state struggles to distribute locally produced products efficiently and lacks warehousing capacity to aid in the distribution.

RDFC is dedicated to playing an active role in revitalizing the rural economy. The following pages outline the rural development plan RDFC will follow for administering the Revolving Loan Fund. This plan will assist in safeguarding the funds to ensure the Revolving Loan Fund existence into the future so the cooperative may continue to promote growth of meat processing/supply chain businesses in rural North Dakota.

### **OVERVIEW**

The Rural Development Finance Corporation arose out of the rural electric and telecommunications cooperative's dedication to cooperative principle #7 – Concern for Community. Cooperative directors live and work in rural communities across North Dakota and have a desire to help build and retain vibrant communities that lend to a fulfilling quality of life. RDFC achieves its mission through a revolving loan fund that provides low interest financing to rural businesses, cooperatives, and community facilities. These businesses offer, among many things, healthy foods, childcare, health care, and entertainment. RDFC considers applications that help build assets in rural communities and cooperatives. RDFC has designed its programs to complement existing financing tools in North Dakota's rural communities.

To achieve their initiative, the corporation has developed the Meat Processing/Food Supply Chain Revolving Loan Fund through the Rural Business-Cooperative Service and its Meat Processing Intermediary Lending Program. This policy sets forth RDFC's objectives for the fund and defines the authority for the approval and administration of the fund and provides a reference for the fund's lending activities.

### **OBJECTIVES**

The objectives which RDFC strives to meet through the operation of this Revolving Loan Fund program are:

- To facilitate the start-up, expansion, and operation of entities engaged in primary processing or further processing of meat and poultry
- To enhance the development and expansion of businesses and jobs that will significantly benefit rural communities.
- To strengthen the North Dakota food supply chain, assuring there is a consistent supply of meat products for retailers, schools, hospitals, and consumers.
- To increase the volume of local meat processed and sold regionally.
- To improve the capacity of local meat processing for ranchers, reducing wait times and improving the management of their operations.
- To build stronger, more resilient, rural economies
- To expand RDFC's capacity to provide low interest financing to support the growth and sustainability of businesses that bolster the food supply chain.

### **RURAL LOAN FUND POLICY STATEMENTS**

RDFC will accept and consider applications for loans from the Revolving Loan Fund for projects that will significantly benefit rural areas, without restriction to RDFC's members' (rural electric and telecommunications cooperatives) service area or any other area.

RDFC will not condition the approval of a loan from the Revolving Loan Fund with the requirement that the prospective recipient take electric or telecommunications services from the corporation's members or any other associated electric utility.

The Board of Directors of RDFC is the sole authority for approval or denial of loans from the Revolving Loan Fund and is responsible for all decisions and actions of the Revolving Loan Fund. The Revolving Loan Fund will be operated and maintained solely by RDFC.

It is the intent of RDFC that funds from the Revolving Loan Fund program serve as seed money to generate the construction, expansion, or sustainability of small, regional meat plants in North Dakota. RDFC will work with local lenders and others to maximize the leverage of the Revolving Loan Fund dollars so that the result is the maximum possible economic development. It is further intended that RDFC use the Revolving Loan Fund program to supplement, but not compete with, capital that may already exist within the communities.

RDFC will establish an independent account for this revolving loan program. This account will receive advances from USDA along with the matching funds from RDFC. In addition, the account will be used for disbursing ultimate recipient loans and collecting ultimate recipient loan payments; as well as collecting funds from the Ultimate Recipient to cover actual costs related to loan closings and payment of those fees and USDA approved administrative costs.

## **LENDING PARAMETERS**

### **ELIGIBLE APPLICANTS:**

- Business ventures including corporations, partnerships, sole proprietorships, cooperatives
- Governmental units, including local townships, municipals or boroughs, county government, regional authorities
- Non-profit entities
- Tribal authorities
- Individual borrowers must be citizens of the United States or reside in the United States after being legally admitted for permanent residence.

### **TYPES OF PROJECTS ELIGIBLE FOR FUNDING**

- A project that processes or proposes to process meat or poultry that is engaged or proposing to engage in a project to produce a commercial food product either directly or through contractual, lease or service agreements with another entity or entities, including affiliated entities or be a business engaged or proposing to engage in custom exempt processing.
- A project that processes or proposes to process meat or poultry, including those that are custom exempt and comply with the requirements of USDA Food Safety and Inspection Service and with the requirements of state, tribal, and local governments.
- A project, including affiliates of the applicant engaged or proposing to engage in, either directly or through contractual, lease or service agreements with another entity or entities, include affiliated entities, beef, pork, chicken, or turkey processing must not hold a

market share greater than or equal to the entity that holds the fourth largest share of that market for the species addressed in the application. (self-certification required).

- As funds are revolved, the following are types of projects eligible for funding:
  - An eligible business engaged in or proposing to engage in aggregating, processing, manufacturing, storing, transporting, wholesaling, or distributing food.
  - A business with existing or proposed contractual, lease, or service agreements with another entity or entities, including affiliated entities which are engaged or proposing to engage in aggregating, processing, manufacturing, storing, transporting, wholesaling, or distributing food.
  - Meat and poultry processing business that within the eligible project types listed in the first three bullets of this section.

### **TYPES OF ACTIVITIES ELIGIBLE FOR FUNDING**

- Purchase and development of land, buildings, or infrastructure for public or private commercial enterprises or industrial properties in North Dakota, including expansion or modernization.
- Leasehold improvements when the lease contains no reverter clauses or restrictive clauses that would impair the use or value of the property as security for the loan. The term of the lease must be equal to or greater than the term of the loan.
- Constructing or equipping facilities for lease to public or private enterprises engaged in commercial or industrial operations. Financing for mixed-use properties, involving both commercial business and residential space, is authorized provided that at least 50 percent of the building's projected revenue will be generated from meat processing or other eligible food businesses uses.
- Purchase of machinery and equipment including but not limited to slaughter and processing equipment, manufacturing systems, information technology systems, and commercially available new technologies that promote worker safety or food safety.
- Debt refinancing when it is determined that the project is viable, and refinancing is necessary to improve cash flow or obtain appropriate lien positions. Debt being refinanced must be debt of the applicant reflected on its balance sheet. The intermediary's analysis must document that, except for the refinancing of lines of credit, the debt being refinanced was for an eligible loan purpose, listed above.
- Interest (including interest on interim financing) during the period before the first principal payment becomes due or when the facility becomes income-producing, whichever is earlier.
- Pollution control and abatement as related to transportation, waste management and other activities related to otherwise eligible projects.
- Startup costs, working capital, fees and expenses related to meeting federal inspection and state or local regulation, inventory, and supplies in the form of a permanent working capital term loan.
- Participation loans

### **LOAN TERMS AND CONDITIONS**

#### **AMOUNT**

The Revolving Loan Fund will not lend more than 80 percent of the total amount that is needed for a project. The maximum amount of a single loan may not exceed the amount of available funds at the time of application. The minimum Revolving Loan Fund loan amount is \$50,000.

## **INTEREST RATES**

The interest rate will be set by the RDFC board of directors annually, but not to surpass the prime rate at any given time. The same rate will be offered to all borrowers, providing equal, fair access to financing. The minimum interest rate will be one percent.

## **ORIGINATION FEE/FEES**

A one-time origination fee will be applicable for all loans. The fee will be no more than one percent (1%) of the loan principle due at the time of loan closing. RDFC will also charge the ultimate recipient for actual costs incurred as a result of the loan closing (i.e., legal fees, appraisals, etc.)

As the fund revolves, annual budgets will be submitted to the USDA Rural Business-Cooperative Service setting forth the costs of operating the Revolving Loan Fund.

## **REPAYMENT TERMS**

Repayment terms will not exceed thirty (30) years. The following maturities will be used as a general guideline:

Building	30 years
Real Estate	30 years
Equipment	5 – 7 years or depreciable life
Working Capital	1 – 3 years

## **SUPPLEMENTAL FINANCING**

Revolving loans are limited to financing 80 percent of a project. Supplemental financing of 20 percent will be required. Evidence of availability of supplemental financing will be required prior to advance of Revolving Loan Funds.

## **SECURITY**

RDFC will work with the potential borrower to obtain security that is adequate for the term of the loan. The nature of the collateral pledged shall be determined by staff on a project-by-project basis. Generally, security will consist of a first lien position on real property. If the same collateral is used in joint financing, the Revolving Loan Fund will require a parity position with other lenders. Other types of security may include:

- Letters of credit from acceptable financial institutions;
- Machinery and equipment which have a developed market;
- Accounts receivable and inventory for short-term loans; and
- Securities issued by the Federal government or its agencies.

The loan recipient will be required to maintain fire insurance, and flood insurance, if necessary, on secured assets. In some cases, credit life or key man insurance will be required with the Revolving Loan Fund as loss payee.

Personal guarantees from partners or majority stockholders may be required for all corporate or partnership borrowings where the equity requirement is not met by cash.

In participation loans, security will be shared among lenders based on their participation level.

Historically, RDFC has entered into participation loans or secured loans through a promissory note, taking a subordinated position. For this program, RDFC staff will work with its legal counsel, Kevin Mason with Vogel Law Firm, to develop appropriate collateral and security documents.

### **APPLICATION PROCESS**

All applicants for Revolving Loan Funds will be required to complete an application form, providing verifiable data which demonstrates that their proposed projects are economically feasible, sustainable, and will provide benefits to rural areas, either through job creation or infrastructure improvements.

### **APPLICATION SELECTION PROCESS**

The Revolving Loan Fund will be administered under the direction of the executive director of the corporation, within the parameters set by the board of directors.

Technical assistance for potential projects will be provided by RDFC in conjunction with other technical assistance service providers in the area.

All applicants for Revolving Loan Fund financing will be required to complete an application which includes sufficient information to properly evaluate the merits of the request. The procedure for review and action on application will include but not be limited to:

- The application period is open. RDFC will accept applications at any time.
- The corporation will review applications for eligibility and completeness. If more information is needed, it will be requested. Any requests for additional information may delay processing. If the project does not meet eligibility criteria, the applicant will be notified within ten (10) working days and allowed to provide additional information.
- RDFC staff will analyze the request using the criteria of the Revolving Loan Fund, negotiate terms with the applicant, and develop a recommendation for the board. All applications submitted will be forwarded to the board of directors.
- The board of directors will act upon the recommendation of RDFC's staff and notify the applicant of their decision in writing with five (5) working days following the board's decision.
- RDFC's staff will arrange for the closing in a timely manner based on the contingencies set forth by the board of directors.
- Projects will be monitored for compliance with covenants in the closing documents for financial performance. Reports will be made to the board of directors at least quarterly on problem loans. The status of performing loans will be reported to the board quarterly.
- The project will submit, at least annually, a year-end balance sheet, income and expense statement and report on milestones reached as outlined during the application process. More frequent reporting may be required according to loan conditions and the status of loan performance.

- Specific sanctions as outlined in the guidelines will be enforced for noncompliance with loan conditions or nonperformance.
- RDFC has a conflict-of-interest policy in place prohibiting a person in a position of authority at RDFC to benefit financially from a decision he or she could make in that capacity, including indirect benefits such as to family members or businesses with which the person is closely associated.

### **LENDING CRITERIA**

- Any risk to RDFC's financial condition will be a factor in approving each application.
- The applicant must submit a detailed business plan.
- RDFC will require a description of the entity which will own, construct and operate the project.
- Approval will be contingent upon other debt financing entities listed in the business plan.
- The applicant must not be delinquent on any debt or in bankruptcy proceedings.
- Project must comply with the National Environmental Policy Act (7 CFR Part 1970).

### **CLOSING AND DISBURSEMENT PROCESS**

Loan funds will be disbursed by check or wire transfer to the successful applicants upon:

- Evidence that all supplemental funding has been committed.
- Evidence that all loan conditions have been met.
- Proper documentation of expenditures or commitment of funds for the approval purposes. Documentation may include invoices, purchase orders, bills of sale, deeds, receipts or other evidence.

### **LOAN MONITORING**

Loan monitoring will require regular reporting by the loan recipient. This includes, at the option of the Corporation, the following:

- Annual income statements and balance sheets. Depending on the nature of the project and the security arrangements, the Corporation reserves the right to require the submission of annual financial reports as audited by a certified public accountant.
- Periodic management information reports. Management reports will be required on a semi-annual basis beginning six months after the advance of the Revolving Loan Funds and continuing semi-annually thereafter for a period of three years or until completion of the project, whichever is the later period.
  - Management reports will include:
    - Information on the number of jobs created or retained during the reporting period;
    - Information on number of animals processed and market;
    - A comparison of accomplishments during the reporting period to the objectives established for the project; and
    - A description of any problems, delays, or adverse conditions which will materially affect the attainment of planned project objectives and a statement of action taken or contemplated to resolve the situation.

The corporation reserves the right to require these reports on a more frequent basis if it is determined to be in the best interest of the Revolving Loan Fund.

- Telephone contact and site visits. At a minimum, semi-annually, a representative of the cooperative will initiate a phone call to the loan recipient to review performance and issues. On-site visits will be conducted semi-annually to verify and evaluate the use of the Revolving Loan Funds. An annual review and report of the outstanding loans of the Revolving Loan Fund, including job creation totals and community benefits, will be compiled by the RDFC staff for presentation to the entire Board of Directors.

### **SANCTIONS FOR NONCOMPLIANCE/NONPERFORMANCE**

Nonperformance and/or noncompliance by the business will result in a freeze or any unused funds or access to any additional funding. A specific schedule to bring the business into compliance with the original terms of the loan agreement; or a determination to call the loan will be established by RDFC.

### **FILE RETENTION**

All Revolving Loan Fund files will be retained for a period of no less than two full years after the loan has been paid in full. After two years, any paper files will be destroyed by shredding or incineration. Files will be primarily saved electronically and securely in the cloud. Paper files will be secured in a locked, safe place and access will be limited to staff with Revolving Loan Fund responsibilities only. Other security measures will be initiated as needed to protect confidentiality of loan documents.

### **AMENDMENTS**

Amendments to this rural development plan will require the approval of RDFC's Board of Directors. No action will be taken to amend this plan without the prior written approval of USDA Rural Business-Cooperative Service, its successors or assigns.

### **NONDISCRIMINATION**

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Room 1341-S; STOP 0703; Washington, D.C. 20250-0703 or call (800)787-8821 (voice). USDA is an equal opportunity provider and employer.

RDFC is committed to providing inclusive and accessible programs, services and events. For reasonable accommodations requests, please contact RDFC at (701)663-6501 or 1-800-234-0518.

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Lori Capouch, Executive Director  
Rural Development Finance Corporation

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Date

## Rural Development Finance Corporation

### LOAN AGREEMENT

This Loan Agreement (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Effective Date**") between Rural Development Finance Corporation, a North Dakota non-profit corporation ("**Lender**"), and [INSERT NAME OF BORROWER], a North Dakota [INSERT ENTITY TYPE] ("**Borrower**") whose principal place of business is located at \_\_\_\_\_, North Dakota.

WHEREAS, the Borrower has requested a one-time loan in the amount of \_\_\_\_\_ and no/100 Dollars (\$\_\_\_\_\_) for the purpose of \_\_\_\_\_; and

WHEREAS, Lender is willing to lend to Borrower the amount requested upon the terms and conditions herein set forth;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, Borrower and Lender agree as follows:

#### SECTION 1. THE LOAN

1.1 Amount of Loan. Subject to the terms and conditions of this Agreement, Borrower agrees to borrow from Lender and Lender agrees to lend to Borrower the sum of \_\_\_\_\_ and no/100 Dollars (\$\_\_\_\_\_) (the "**Loan**"). The Loan will be evidenced by the promissory note (the "**Note**") that shall be executed by Borrower and dated as of the Effective Date in the form attached hereto as Exhibit A.

1.2 Use of Proceeds. The proceeds of the Loan will be used solely for the purposes enumerated in the Loan Application. As used herein, "**Loan Application**" means that certain Loan Application by Borrower for the \_\_\_\_\_ [INSERT NAME OF LOAN PROGRAM], dated \_\_\_\_\_, marked as Exhibit B and attached hereto and made part of this Agreement.

1.3 Term. The term of the Loan, as indicated in the Note, shall be for Ten (10) years from the date of the Note (the "**Term**").

1.4 Interest. The unpaid principal balance of the loan shall bear interest at the rate of \_\_\_\_ percent (\_\_\_%) per annum.

1.5 Fees. A one percent (1%) loan fee will be charged no later than at the time of any loan advances or renewals. Although the loan is approved until DATE, funds are still subject to availability and only committed in relation to the amount of the loan fee paid. Loan fees paid will be considered forfeited even if all of the loan funds are not drawn by borrower within six months of payment of loan fee.

1.6 Savings Clause. Notwithstanding any provision in this Agreement or in any other

agreement, note or instrument evidencing, securing or otherwise pertaining to the Loan, the total liability for payments of interest and payments in the nature of interest, including, without limitation, all charges, fees, late fees, exactions, or other sums which may at any time be deemed to be interest, shall not exceed the limit imposed by the usury laws then in effect in the State of North Dakota or any other applicable law. In the event the total liability of payments of interest and payments in the nature of interest, including, without limitation, all charges, fees, exactions or other sums which may at any time be deemed to be interest, shall, for any reason whatsoever, result in an effective rate of interest, which for any month, year, or other interest payment period exceeds the limit imposed by the usury laws then in effect in the State of North Dakota, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice by, between, or to any party hereto, be applied to the reduction of the outstanding principal balance under this Agreement immediately upon receipt of such sums by the Lender, with the same force and effect as though the Borrower had specifically designated such excess sums to be so applied to the reduction of such outstanding principal balance and the Lender hereof had agreed to accept such sums as a penalty-free payment of principal; provided, however, that the Lender may, at any time and from time to time, elect, by notice in writing to the Borrower, to waive, reduce, offset, or limit the collection of any sums in excess of those lawfully collectible as interest rather than accept such sums as a prepayment of the outstanding principal balance. It is the intention of the parties that the Borrower does not intend or expect to pay nor does the Lender intend or expect to charge or collect any interest under this Agreement greater than the highest non-usurious rate of interest which may be charged under applicable law.

#### 1.7 Payments.

- (a) Except as provided in Sections 1.7(b) and 1.7(c), the Loan shall be repaid in Ten (10) equal annual installments of principal and interest due on the anniversary date of the Effective Date, commencing on the first anniversary thereof and continuing until the Tenth (10<sup>th</sup>) anniversary of the Effective Date (the “**Maturity Date**” unless sooner accelerated pursuant to the terms of this Agreement). Each annual payment shall be in the amount \_\_\_\_\_ **Dollars and** \_\_\_\_\_ Cents (\$ \_\_\_\_\_.), reflecting an equal, annual installment of the total principal and interest of the Loan fully amortized over the Term; provided, however, that on the Maturity Date, Borrower shall pay the entire outstanding principal balance of the Loan and all accrued, unpaid interest in full. All payments on the Loan shall be applied first to unpaid accrued interest, then to unpaid principal.
- (b) If the Loan is made in refinancing of existing loans to Borrower, and the initial principal amount of the Loan is in an amount less than two thousand dollars, Lender shall not collect any refinance fees along with any fees collected as part of the original loans in excess of the lesser of one hundred dollars (\$100.00) per calendar year or the maximum amount permitted by law. Lender may assess additional charges may be assessed as part of a loan extension or deferment of payment agreed to by the parties within the agreement for extension or deferment, provided that Lender may not contract for or receive charges in excess of one hundred dollars (\$100.00) for such loan extensions or deferments per calendar year.

1.8 Late Payment Fee. Annual payments shall be due on each anniversary date of the Effective Date during the Term. In the event any payment shall not be made within ten (10) days of the

payment date, such payment shall be considered late and a late payment fee of the lesser of either (a) five percent (5%) of the payment amount; or (b) the maximum late fee permitted by law shall be added to the payment amount. Such late payment fees are assessed for the purposes of defraying expenses incidental to handling delinquent payments. The payment of a late payment fee shall not cure or constitute a waiver of any Event of Default or any right or remedy of Lender under this Agreement or the Note.

1.9 Prepayment. The Loan may be prepaid in full or in part at any time without penalty.

## **SECTION 2. WARRANTIES AND REPRESENTATIONS**

Borrower hereby represents, warrants and covenants to, and agrees with, Lender as follows:

2.1 The Borrower is a [INSERT ENTITY TYPE, e.g. Non-Profit Development Corporation], existing and in good standing under the laws of the state of North Dakota, and has full power and authority to execute this Agreement to borrow as herein provided, and to do all things required of it hereunder, and that such actions do not violate any provisions of the Borrower's articles, bylaws, operations statement, internal corporate or similar organizational documents or the like, or any agreement, lease, indenture, mortgage, deed of trust, land contract, license or other instrument to which Borrower is a party or by which Borrower or any of its assets are or may be bound or affected or to which Borrower is subject, or any law, regulation, order, writ, injunction or decree of any court or agency or regulatory body having jurisdiction.

2.2 Borrower has full authority to enter into this Agreement, and to execute the Note. Borrower has full authority to execute and deliver the Note provided for in this Agreement and to incur the obligations provided for herein. Any consent required as a condition to the validity of this Agreement or the Note has been obtained.

2.3 The execution and performance of this Agreement will not violate any provision of any agreement or instrument to which Borrower is a party, nor require the consent or approval of any governmental agency or authority or of any third party.

2.4 The Borrower has no unpaid taxes, either state, local or federal, which may become due or payable on or before the date of this Agreement, and there are no legal proceedings of any kind pending against the Borrower, which would jeopardize the security for the loan made hereunder.

2.5 Borrower is not in default with respect to any loan agreement or any other obligation which it may have with any person or entity.

2.6 This Agreement and the Note constitute the valid, legal and binding obligations of Borrower enforceable in accordance with their respective terms.

## **SECTION 3. AFFIRMATIVE COVENANTS**

From the Effective Date and until the Loan is paid in full, the Borrower covenants and agrees that it will do each and all of the following:

3.1 Furnish to Lender: (a) Annual prepared financial reports, including a Profit and Loss Statement and Balance Sheet (or equivalent) for Borrower, due within one-hundred twenty (120)

days of the end of each calendar year; and (b) an annual report on forms provided by Lender will be due within 120 days of the end of each calendar year until the loan has been paid in full.

3.2 Promptly inform Lender of any occurrence which materially affects its financial condition adversely, or its ability to comply with its obligations hereunder; grant to Lender or its representatives the right to examine at any reasonable time all of the Borrower's books and records; and within twenty (20) days after receipt of a written request from Lender, furnish any information which Lender may reasonably request regarding their affairs.

3.3 Maintain insurance of such type and in such reasonable amounts and with such insurers as shall be satisfactory to Lender, against all hazards as are usually insured against by organizations engaged in the same or similar business, and with loss payable to Lender (Rural Development Finance Corporation) as its interest may appear.

3.4 Pay or cause to be paid as often as the same may become due and payable, all taxes and assessments of any nature which may be lawfully assessed or levied against the Borrower or any of their properties.

3.5 Reimburse Lender for any and all expenses incurred by Lender, including any collection costs (including attorney fees), incurred with the collection of any amounts due from Borrower under this Agreement or the Note, including, without limitation, any past due payments.

3.6 Borrower agrees to allow Lender to examine and inspect the project contemplated hereunder at least annually and more often if Lender deems advisable.

3.7 Borrower shall take all actions necessary to maintain the truth, correctness and accuracy in all material respects of all representations and warranties made by Borrower in this Agreement.

#### **SECTION 4. NEGATIVE COVENANTS**

From the Effective Date and until the Loan is paid in full, the Borrower covenants and agrees it will not, without prior consent of Lender, do any of the following:

4.1 Sell, encumber or transfer any asset other than in the ordinary course of business.

4.2 Pay dividends, transfer or issue ownership interests, pay bonuses to management, disburse funds or lend money to any owners of the Borrower.

#### **SECTION 5. EVENTS OF DEFAULT**

Each of the following shall constitute an "**Event of Default**":

5.1 If any warranty or representation of the Borrower contained in this Agreement, or in the Loan Application or any other loan application, financial statement or report, or any other document or instrument submitted to Lender by Borrower, shall prove to be false or inaccurate in any material respect.

5.2 If the Borrower shall fail to perform any of its obligations or comply with any of the terms or conditions of this Agreement or of the Note, and the Borrower shall fail to remedy such default within ten (10) days after written notice thereof.

5.3 If the Borrower shall fail to pay any amount owing to Lender under this Agreement and/or the Note within ten (10) days after the due date, or if Borrower shall default in the repayment of any other indebtedness which Borrower may now or hereafter owes to Lender.

5.4 Borrower (a) institutes or consents to any proceedings in insolvency or bankruptcy, or for the adjustment, liquidation, extension or composition or arrangement of debts or for any other relief under any bankruptcy or insolvency law, statute, ordinance, rule or regulation relating to the relief or reorganization of debtors, (b) is adjudicated a bankrupt, files an answer admitting bankruptcy or insolvency or in any manner is adjudged insolvent, (c) makes a general assignment for the benefit of creditors or (d) admits in writing an inability to pay debts as they become due.

5.5 If any proceeding in insolvency or bankruptcy, or for the adjustment, liquidation, extension or composition or arrangement of debts or for any other relief under any bankruptcy or insolvency law, statute, ordinance, rule or regulation relating to the relief or reorganization of debtors, is instituted against Borrower, and such proceeding is not discharged or dismissed within sixty (60) days after the proceeding is commenced.

5.6 If the Borrower neglects or refuses to furnish Lender with any information required by this Agreement, and the Borrower shall fail to remedy such default within ten (10) days after written notice thereof.

5.7 If the assets of the Borrower are sold (outside the ordinary course of business) or if there any a change in ownership of the Borrower.

## **SECTION 6. REMEDIES UPON DEFAULT**

Upon the occurrence of any Event of Default, unless such default is waived in writing by Lender, Lender shall be entitled, at its option, to exercise any or all of the following rights and remedies:

- a) Declare the entire unpaid balance of the Loan and all other indebtedness hereunder, including without limitation, the entire unpaid principal balance and all accrued and unpaid interest, immediately due and payable, without presentment, demand or notice of any kind, all of which are hereby expressly waived.
- b) Exercise any enforcement remedy specified in this Agreement, the Note, or in any note or instrument, executed in connection with this Agreement, or exercise any remedy of Lender existing under applicable law

All remedies provided to Lender under this Agreement are intended to be cumulative, and any one or more may be exercised by Lender, at its option, including without limitation, any remedies available to Lender under applicable law. The exercise by Lender of any remedy reserved to Lender under this Agreement or provided by law is not intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be in addition to every other

remedy now or hereafter existing at law, in equity or by statute.

## **SECTION 7. CONDITIONS PRECEDENT**

The obligations of Lender under this Agreement are subject to the following conditions precedent, all of which must be fulfilled prior to or concurrently with the advance of any funds under this Agreement.

- a) Lender has received the Note.
- b) Lender has received all documents required by this Agreement to be delivered to Lender and such documents shall be in full force and effect.
- c) All representations or warranties contained in this Agreement are true and correct.
- d) There is no event of default and no condition, event or act, which with notice or lapse of time, or both, would constitute an event of default.
- e) All legal proceedings and documents in connection with the borrowing under this Agreement, including without limitation, any financing statements, insurance policies, certificates of insurance and affidavits, as Lender has reasonably requested, are in form and substance acceptable to Lender and its counsel.
- f) Borrower has obtained and furnished to Lender written verification of funding commitments and terms.

## **SECTION 8. MISCELLANEOUS**

8.1 Any and all notices required under this Agreement shall be in writing, and shall be served either personally or by United States mail, with postage thereon fully prepaid, addressed to the parties at their addresses provided on the signature page to this Agreement, or such address as either party may provide to the other pursuant to the foregoing notice provision.

8.2 No act, omission or delay by Lender or any course of dealing between the parties shall constitute a waiver of Lender's rights and remedies hereunder or otherwise. Failure of Lender to enforce at any time, or for any period of time, any of the provisions of this Agreement, shall not be construed as a waiver of such provisions or of the right of Lender thereafter to enforce each and every provision. Nor shall a waiver by Lender on any one occasion be construed as a bar to or waiver of any right on any future occasions. All rights and remedies of Lender shall be cumulative and be exercised singularly or concurrently.

8.3 The invalidity of any one or more phrases, clauses, sentences, paragraphs or provisions of this Agreement shall not affect the remaining portions hereof.

8.4 The validity, interpretation and enforcement of this Agreement, and the rights of the parties hereto, shall be determined under, governed by, and construed in accordance with, the laws of the State of North Dakota, without regard to principles of conflicts of law of any jurisdiction.

8.5 This Agreement shall (1) be binding upon, and inure to the benefit of, the successors, assigns and legal representatives of Borrower and (2) together with the rights and remedies of Lender hereunder, inure to the benefit of Lender, its successors, endorsees, and assigns. Notwithstanding the foregoing, Borrower shall not have the right to assign or delegate any of its

rights or obligations hereunder without the prior written consent of Lender, and any purported assignment or delegation in the absence of such consent shall be void.

8.6 All covenants, representations and warranties made in the Agreement shall survive its termination and continue until Lender receives payment in full of all sums owing pursuant hereto.

8.7 This Agreement may be signed in one or more counterparts with the same effect as if the signatures were upon the same instrument.

8.8 This Agreement may be amended, modified, renewed or extended only by written instrument executed in the manner of its original execution. This Agreement and the Note constitute the sole and entire agreement of the parties, and no statement or promise has been made with respect to the subject matter of such agreements other than is expressed herein or therein. In the event of any conflict between the terms of this Agreement and the terms of the Note, this Agreement shall control.

8.9 BORROWER AND LENDER WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY FOR ANY DISPUTES OR ISSUES ARISING OUT OF OR CONNECTED TO THE LOAN, THE NOTE OR THIS AGREEMENT.

8.10 The parties hereby irrevocably and unconditionally submit themselves to the exclusive jurisdiction of any state or federal court located within Burleigh County, North Dakota in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such North Dakota court or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Borrower and Lender waiver any right Borrower or Lender may have to assert the doctrine of "Forum Non Conveniens" or to object to venue to the extent any proceeding is brought in accordance with this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

**Borrower:**

**[INSERT NAME OF BORROWER]**

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

Attest: \_\_\_\_\_  
By: NAME

Borrower Address:

\_\_\_\_\_  
\_\_\_\_\_

---

**Lender:**

**RURAL DEVELOPMENT FINANCE CORPORATION**

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

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

Its: Executive Director

Lender Address:  
P.O. Box 727  
Mandan, ND 58554

## EXHIBIT A

(Promissory Note)

**\$[INSERT AMOUNT]**

**“Effective Date”:** \_\_\_\_\_

FOR VALUE RECEIVED, **[INSERT NAME OF BORROWER]** a North Dakota \_\_\_\_\_ (“**Borrower**”) with an address of \_\_\_\_\_, promises to pay to the order of Rural Development Finance Corporation, a North Dakota non-profit corporation, (“**Lender**” which term includes any holder of this Note), in legal and lawful tender of the United States of America, the principal sum of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00), together with accrued interest, on the terms set forth in this Promissory Note (this “**Note**”).

This Note has been executed and delivered pursuant to and is subject to the terms and conditions of that certain Loan Agreement, with a date of **[INSERT DATE OF LOAN AGREEMENT]**, by and between Borrower and Lender (the “**Agreement**”). Capitalized terms used in this Note without definition provided herein shall have the meanings set forth in the Agreement. This Note is the “**Note**” referred to in the Agreement.

1. Interest Rate/Maturity Date. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a per annum rate equal to \_\_\_\_\_ percent (\_\_\_\_\_% ) per annum (the “**Interest Rate**”) compounded annually from the date hereof until paid. The maturity date of this Note (the “**Maturity Date**”) is the earliest of: (i) **[INSERT DATE OF 10<sup>TH</sup> ANNIVERSARY OF EFFECTIVE DATE]** or (ii) the date on which the maturity of this Note is accelerated pursuant to Section 5 of this Note.
2. Payment of Principal and Interest. Beginning on **[INSERT DATE ONE YEAR FROM EFFECTIVE DATE]**, and continuing until the principal sum stated above, and all accrued interest thereon, has been paid in full on or before the Maturity Date, the Borrower shall pay to Lender a annual payment of principal and interest in the amount of \$\_\_\_\_\_. On the Maturity Date, Borrower shall pay to Lender the entire outstanding principal balance of this Note together with all accrued, unpaid interest thereon. All payments made on this Note shall be applied first to accrued interest and then to principal.
3. Manner of Payment. All payments of principal and interest on this Note shall be made by check to the payment address as shall be designated by Lender in writing. If any payment of principal and accrued interest thereon is due on a Saturday, Sunday, or public holiday, such payment shall be made on the next succeeding business day, and any such extension of time shall in such case be included in computing interest in connection with such payment. Interest shall continue to accrue at the Interest Rate.
4. Prepayment Allowed. Borrower may prepay without penalty or premium in whole or in part the unpaid principal balance or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest, and then to unpaid principal.
5. Acceleration Upon Default. Upon the occurrence of an Event of Default, Lender may

accelerate the principal of this Note and all interest then accrued, and the same shall become immediately due and payable and subject to those rights and remedies of the Lender or the holder hereof. “**Event of Default**” means the Maker’s failure to pay any amount due on this Note within ten (10) days of the date it becomes due, and any other Event of Default (as defined in the Agreement).

6. Late Payment. In the event any payment shall not be made within ten (10) days of the payment date, such payment shall be considered late and Borrower shall owe a late payment fee of the lesser of either (a) five percent (5%) of the payment amount; or (b) the maximum late fee permitted by law shall be added to the payment amount. Such late payment fees are assessed for the purposes of defraying expenses incidental to handling delinquent payments. The payment of a late payment fee shall not cure or constitute a waiver of any Event of Default or any right or remedy of the Lender or the holder hereof.
7. Course of Dealing. No act, omission or delay by Lender or any course of dealing between the parties shall constitute a waiver of Lender’s rights and remedies hereunder or otherwise. No single or partial exercise of any right, power or privilege hereunder shall be deemed to be an election of remedies nor shall it preclude any other or further exercise thereof or the exercise of any other right, power or privilege. All rights and remedies existing under this Note shall be cumulative and are in addition to those otherwise provided by law.
8. Extensions. The holder of this Note may make extensions of time for payment of the indebtedness evidenced by this Note, or reduce the payments thereon, release any collateral securing payment of such indebtedness or accept a renewal note or notes therefor, all without notice to Borrower or any endorser(s) and Borrower and all endorsers hereby severally consent to any such extensions, reductions, releases and renewals, all without notice, and agree that any such action shall not release or discharge any of them from any liability hereunder. Borrower and endorser(s), jointly and severally, waive demand, presentment for payment, protest, notice of protest and notice of nonpayment or dishonor of this Note and each of them consents to all extensions of the time of payment thereof.
9. Notices. Any notice required or permitted to be given hereunder shall be given in accordance with the Agreement.
10. Governing Law. This Note and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the substantive laws of the state of North Dakota without regard to any conflicts of law provisions thereof that would result in the application of the laws of any other jurisdiction.
11. Venue/Jurisdiction. Borrower and Lender irrevocably and unconditionally submit, for themselves and their property, to the nonexclusive jurisdiction of any state court located within Burleigh County, North Dakota or any Federal court in Burleigh County, North Dakota in any action or proceeding arising out of or relating to this Note, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such North Dakota court or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive

and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**12. Jury Waiver. BORROWER AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND LENDER ARISING IN ANY WAY OUT OF THIS NOTE OR WHICH IN ANY WAY INVOLVES ANY OF THE RIGHTS, OBLIGATIONS OR REMEDIES OF ANY PARTY TO THIS NOTE.**

**13. Headings.** The section headings used herein are for convenience only and shall not be read or construed as limiting the substance or generality of the sections of this Note.

**14. Successors and Assigns.** This Note (i) is binding upon, and inures to the benefit of, the successors, assigns and legal representatives of Borrower and (ii) together with the rights and remedies of Lender hereunder, inures to the benefit of Lender, its successors, endorsees and assigns. Notwithstanding the foregoing, Borrower may not assign or delegate any of its rights or obligations hereunder without the prior written consent of Lender, and any purported assignment or delegation in the absence of such consent shall be void. Lender may freely assign this Note without the consent of Borrower.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the Effective Date.

**BORROWER:**

**[INSERT BORROWER's NAME].**

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

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

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

Disclosure

The Rural Development Finance Corporation holds a money brokering license and is regulated by the North Dakota Department of Financial Institutions.

The North Dakota Department of Financial Institutions can be reached at:

2000 Schafer Street, Suite G

Bismarck, ND 58501-1204

Phone: 701-328-9933

Fax: 701-328-9955

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Borrower

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Date

**EXHIBIT B**

(Loan Application)

ATTACHED.

## PARTICIPATION AGREEMENT

This Agreement is made as of \_\_\_\_\_, by and between <<MARK>>, North Dakota ("Originating Lender") and the Rural Development Finance Corporation, Mandan, North Dakota ("RDFC"). Unless otherwise agreed to in writing by both parties, this agreement shall govern and control all loan participations subsequently entered into between Originating Lender and RDFC and replaces and supersedes all previous agreements between RDFC and the Originating Lender and banks or institutions acquired, consolidated, or otherwise merged into the Originating Lender.

### 1. Definitions.

- (a) "RDFC's Interest" means the percentage interest of RDFC in the principal amount of and interest on a Loan and the Collateral. The percentage interest of RDFC in any commitment or other fees payable by the Borrower to the Originating Lender shall be as provided in the Partial Assignment.
- (b) "Borrower" has the meaning given that term in a Commitment Letter.
- (c) "Collateral" means all collateral, whether real or personal property, securing payment of the indebtedness evidenced by the Loan Documents or the performance of Borrower's obligations thereunder or the performance of any guaranty, together with any property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, and all proceeds of any such proceeds.
- (d) "Commitment Letter" means the letter from RDFC to Originating Lender accepting the offer by Originating Lender to sell a percentage interest in a Loan to RDFC and containing other terms and conditions which are hereby incorporated as a part of this Agreement.
- (e) "Event of Default" shall be as defined in the respective Loan Documents.
- (f) "Loan" means any loan which Originating Lender has made to a Borrower and which RDFC has agreed to participate in under this Agreement.
- (g) "Loan Documents" means all material documents pertinent to a Loan, including all notes, financing statements, security agreements, mortgages, assignments (including without limitation, the Partial Assignment), certificates, powers, filings, agreements, guaranties and all other writings executed or to be executed in connection with the Loan.
- (h) "Loss" means all liabilities, claims, damages, actions, costs, expenses, settlements, or penalties, including attorneys' fees, which may be incurred by either Originating Lender or RDFC with respect to a Loan.
- (i) "Majority Servicer" means the party appointed as Loan servicing agent in the event of the termination of the Originating Lender's agency status for a loan. The Majority Servicer shall be appointed by the party or parties holding more than fifty percent (50%) of the aggregate outstanding proportionate shares of the Loan.

- (j) "Originating Lender's Interest" means the percentage interest retained by Originating Lender in the principal amount of and interest on a Loan and the Collateral, in the dollar amount set forth in the Commitment Letter.
- (k) "Partial Assignment" shall mean that Partial Assignment of Note entered into by and between RDFC and Originating Lender and assigning RDFC's Interest to RDFC.
- (l) "Person" includes, without limitation, any natural person or corporation, limited liability company, partnership, cooperative, trust, or any other entity.

## 2. Sale and Participation.

(a) Subject to the terms and conditions of this Agreement, Originating Lender and RDFC agree that RDFC shall have and own RDFC's Interest in any Loan participated in under this Agreement. This Agreement, together with a Commitment Letter and the Partial Assignment, constitutes a sale of RDFC's Interest by Originating Lender to RDFC shall in no way be construed as a loan by RDFC to Originating Lender or as creating any relationship other than as provided in this Agreement.

(b) Except as provided herein, Originating Lender's Interest and RDFC's Interest and the rights and powers contained in and in connection with these interests shall be ratably concurrent and neither shall have priority over the other.

(c) Originating Lender shall hold possession of and legal title to the Loan Documents in its name solely to service the equitable interests of RDFC and Originating Lender in the Loan Documents but shall hold the Loan Documents as trustee for RDFC to the extent of RDFC's Interest.

## 3. Loan.

(a) Originating Lender agrees to make a Loan to a Borrower on substantially the terms and conditions which will be set forth in the Loan Documents. In accordance with the respective Partial Assignment, RDFC will deliver to Originating Lender an amount equal to RDFC's Interest in a Loan or any advance on a Loan on the date or dates on which the Loan is to be made in immediately available funds.

(b) Originating Lender will deliver to RDFC copies of the Loan Documents (including any amendments thereto) for so long as RDFC continues to have an Interest in the Loan. By agreeing to purchase RDFC's Interest in accordance with the Partial Assignment, RDFC shall be deemed to have approved the Loan Documents in all respects, both as to form and as to content. In addition, RDFC acknowledges that it has made an independent investigation of, and has satisfied itself with respect to the Borrower, the value of the Collateral, the validity and enforceability of the Loan Documents, and all other matters in connection with the Loan; that it is not relying on the judgment of Originating Lender in connection with entering into this Agreement. Originating Lender also agrees to promptly

notify RDFC of the occurrence of any Event of Default, of which the Originating Lender has actual knowledge and which is not cured within any applicable grace or cure period.

RDFC represents and warrants to Originating Lender that it has independently evaluated all aspects of the Loan prior to the purchase of RDFC's Interest. Neither Originating Lender nor RDFC (i) shall be liable or responsible for any representations or warranties made by, or for obligations binding upon or assumed by, the Borrower or anyone else; or (ii) makes any representation or warranty as to the genuineness, legality, validity, perfection, priority, enforceability or sufficiency of the Loan; or of the Collateral or of any other security interests, mortgage liens, guaranties, or other rights and remedies securing the Loan; or of any of the Loan Documents or any other agreement made or instrument, document or writing issued thereunder, in connection therewith, or as a result thereof, except only that the Originating Lender warrants it has acted with honesty in fact and has exercised the same degree of care as it would exercise if it had not sold RDFC's Interest and were in fact the sole owner of the Loan; or (iii) makes any representation or warranty as to the Borrower, as to any financial statements or collateral reports submitted by or for the Borrower, as to any risk of loss with respect to the Loan or as to any matter whatsoever, except only that Originating Lender warrants to RDFC that it owns the Loan Documents, and has power and authority to grant to RDFC the RDFC Interest acquired by RDFC hereunder in accordance with the terms hereof.

- (c) Originating Lender agrees to pay over to RDFC, pro rata to RDFC's Interest: (i) payments of principal and (ii) payments of interest and fees to RDFC on RDFC's Interest at the rate set forth in the Commitment Letter evidencing a Loan.
- (d) Prior to the funding of a Loan or any advance on a Loan, Originating Lender will execute and deliver to RDFC a Commitment Letter in a form satisfactory to Originating Lender and RDFC.

#### 4. Receipts, Collections, and Expenses.

- (a) Originating Lender shall receive all amounts as they become due and any prepayments in connection with or arising out of a Loan and shall, within one banking day the amounts are received, account for and pay over to RDFC its share of all amounts.
  - (i) To the extent Originating Lender receives with respect to a Loan any payment (including any amount received on account of realizing any Collateral or other rights or remedies securing a Loan), whether of principal, interest or fees, from such payment Originating Lender shall first allocate and pay over to RDFC any amounts received as necessary to satisfy all amounts owing to RDFC as of the subsequent date of payment, and only after full satisfaction of all such amounts due RDFC shall Originating Lender allocate and pay over any remaining part of such amount received to Originating Lender or to any other Person. In the event that the amount of such payment is for any reason insufficient to pay all amounts due and owing to RDFC as of the subsequent date of payment, Originating Lender shall pay over the entire amount of such payment to RDFC, and from any subsequent payment shall allocate

and pay over to RDFC any amounts received as necessary to satisfy all amounts owing to RDFC.

- (ii) Any amount due to RDFC which is not paid within one banking day it is received by Originating Lender shall accrue interest at two times the overnight Federal Funds Rate for each day it is held by Originating Lender.

(b)

- (i) In the event of Borrower's failure to pay taxes, assessments, insurance premiums, claims against the Collateral or any other amount required to be paid by any of the Loan Documents, Originating Lender shall pay the same or shall advance Borrower amounts necessary to pay the same unless Originating Lender reasonably determines that the payment is not necessary to protect or preserve the Collateral, and RDFC will reimburse Originating Lender for RDFC's pro rata share of the amount of the payment made by Originating Lender within a reasonable time following delivery to RDFC of evidence of the payment by Originating Lender. In the event that, pursuant to this Section 4(b)(i), Originating Lender advances any amount to Borrower and Borrower for any reason fails to pay the tax, assessment, insurance premium, claim against the Collateral or other amount for which such advance was made, Originating Lender shall at its own expense pay such tax, assessment, insurance premium, claim against the Collateral or other amount.
- (ii) RDFC shall, on reasonable notice, deliver to Originating Lender RDFC's pro rata share of any expenses reasonably incurred by Originating Lender in connection with the enforcement of a Loan or the Loan Documents and the protection and preservation of the Collateral.
- (iii) Originating Lender shall use due diligence to collect all amounts on a Loan when due and to recover from a Borrower all costs and expenses which are reimbursable from such Borrower.

## 5. Servicing.

- (a) Originating Lender shall service a Loan as the disclosed agent of RDFC and shall receive a servicing fee, if any, in the amount set forth in the Commitment Letter. The servicing shall include, without limitation, the obtaining and review of updated reports with respect to the Collateral, periodic inspections of the Collateral and all other action normally taken by a prudent lender with respect to loans of a comparable nature. Originating Lender will promptly furnish to RDFC a complete copy of any report as to Collateral obtained by Originating Lender.
- (b) Originating Lender and RDFC shall each disclose to the other party immediately any material information received or obtained concerning the financial condition of a Borrower or any guarantor or the ability of a Borrower to manage or complete improvements to Collateral or to conduct its business operations as a going concern on a basis substantially

equivalent to that existing on the date of a Commitment Letter issued under this Agreement, or any change in the condition or status of Collateral, or the ability of a Borrower to repay a Loan and otherwise to perform its duties and obligations under the Loan Documents.

- (c) RDFC shall have the right to examine the Collateral and to examine and make copies of all original Loan Documents and records with respect to a Loan, the Loan Documents, and the Collateral at any reasonable time during Originating Lender's normal business hours.
- (d) As to RDFC, the powers of Originating Lender as agent are limited to those powers expressly set forth in this Agreement and a Commitment Letter.
- (e) Originating Lender's agency status under this Agreement with respect to a Loan shall terminate at the written election of RDFC or Originating Lender upon the event of : (i) the occurrence of any material event of default as defined in the Loan Documents that has not been cured before the expiration of any applicable grace or cure period; (ii) acceleration and demand for payment of the Loan; (iii) commencement of foreclosure or repossession of any collateral securing the Loan (iv) upon the insolvency, closing or liquidation of Originating Lender. Upon termination of agency status, the party or parties holding more than fifty percent (50%) of the aggregate outstanding proportionate shares of the Loan shall appoint a Majority Servicer to service the Loan. Majority Servicer shall have the right to require Originating Lender to declare the Borrower to be in default under the Loan Documents, exercise collection rights with respect to any collateral for the Loan, and/or foreclose against or accept a transfer in lieu of foreclosure of such collateral.

## 6. Modification and Waiver.

Notwithstanding anything in this Agreement or in the Loan Documents to the contrary, Originating Lender reserves the right in its sole discretion, in each instance and without prior notice to RDFC to consent to any action or failure to act by a Borrower, and to exercise or refrain from exercising any powers or rights which Originating Lender may have under or in respect of Loan Documents or any Collateral, including, without limitation, the right to enforce or refrain from enforcing the obligations of a Borrower and of any person liable for the payment of a Loan or the performance of any Loan Documents, except that Originating Lender shall not, except as provided under paragraph 7 of this Agreement (Default and Enforcement), without RDFC's prior written consent:

- a. Reduce principal or interest with respect to a Loan.
- b. Postpone any date fixed for payment of principal or interest with respect to a Loan.
- c. Release any Collateral or agree to the release or modification of any rights or powers with respect to Collateral or agree to or accept any other collateral in substitution for Collateral.
- d. Release, modify, or waive the liability of any person primarily or secondarily liable for the payment of indebtedness or for the performance of any obligations under any of the Loan Documents.
- e. Agree to any amendment or modification of or any waiver of compliance with

any financial covenant of a Borrower contained in the Commitment Letter.

In exercising these rights, Originating Lender shall act with honesty in fact and shall exercise the same degree of care as it would exercise if it had not sold the participation and were in fact the sole owner of the Loan. Neither Originating Lender nor any of its directors, officers, employees or agents shall be liable for any action taken or omitted by Originating Lender or any of them except in the case of Originating Lender's gross negligence or willful misconduct, and then only for actual proximate damages (but not for general or exemplary damages).

#### 7. Default and Enforcement.

- (a) Immediately upon learning of the existence of any event or condition which would constitute an Event of Default under any Loan Document, Originating Lender shall notify RDFC of the circumstances giving rise to such Event of Default and consult with RDFC.
- (b) The agreement of Originating Lender and RDFC shall be required for all matters and decisions relating to the operation, improvement, and disposition of, and any capital expenditures with respect to, Collateral which is acquired by either Originating Lender or RDFC.
- (c) All Collateral and any proceeds resulting therefrom shall be applied to reduction of a Loan in accordance with Section 4(a)(i) hereof and shall be applied to other indebtedness of Borrower to Originating Lender only after the RDFC's Interest in the Loan and any expenses related to the Loan are satisfied in full.
  - (d) If Originating Lender should exercise its right of setoff with respect to any deposit or other indebtedness owing by Originating Lender to a Borrower, the setoff shall be applied to the Loan and to other indebtedness of a Borrower to Originating Lender in accordance with Section 4(a)(i).

#### 8. Collection After Acceleration.

If Originating Lender receives a payment after acceleration of a Loan, whether pursuant to a demand for payment or as a result of legal proceedings against the Borrower or through payment by or action against any other person in any way liable on account of the indebtedness evidenced by the Loan, or from realization upon any security for the Loan, or from any source whatsoever, the payment shall be applied in accordance with Section 4(a)(i).

#### 9. Risks and Standard of Care.

- (a) RDFC acknowledges that it has become a party to this Agreement with the understanding and expectation that it will rely upon its own independent analysis of a Borrower's financial condition and creditworthiness to the extent deemed necessary or advisable by RDFC.
- (b) The responsibilities of Originating Lender shall include, without limitation, attending to the execution of the Loan Documents, keeping complete and accurate books, files, and records

to the Loan Documents and administering a Loan with the same care as a prudent lender would exercise.

- (c) Originating Lender represents it has in place internal programs, policies and procedures to address requirements of the Bank Secrecy Act, Office of Foreign Assets Control and Customer Identification Program. Upon request, Originating Lender agrees to provide evidence of its efforts to comply with those internal programs, policies and procedures.

#### 10. Assignments.

RDFC shall not sell, pledge, assign, subordinate, or otherwise transfer its Interest in the Loan, or in any Loan security or Loan guaranty without the prior written consent of the Originating Lender which will not be unreasonably withheld, except that Originating Lender may sell other participations in the Loan to any Person(s) in addition to RDFC. The duties and benefits of this Agreement will bind and benefit the successors and assigns of RDFC and Originating Lender.

#### 11. Indemnification.

- (a) RDFC hereby indemnifies Originating Lender, its officers, directors, employees, or agents for its pro rata share of any Loss arising out of any action taken or to be taken with respect to a Loan, the Collateral, or the Loan Documents pursuant to this Agreement, unless such action is the direct result of the unilateral gross negligence, recklessness or willful misconduct of Originating Lender. In the event that Originating Lender recovers any such amounts from a Borrower after RDFC has reimbursed Originating Lender for RDFC's Interest of all such amounts, Originating Lender shall return RDFC's Interest of the amounts recovered to RDFC.
- (b) Originating Lender hereby indemnifies RDFC, its officers, directors, employees, or agents for its pro rata share of any Loss arising out of any action taken or to be taken with respect to a Loan, the Collateral, or the Loan Documents in the event RDFC takes or is to take action under the provisions of paragraph 5(e) of this Agreement (Servicing and Default and Enforcement), unless such action is the direct result of the unilateral gross negligence, recklessness or willful misconduct of RDFC. In the event that RDFC recovers any such amounts from Borrower after Originating Lender has reimbursed RDFC for Originating Lender's Interest of all such amounts, RDFC shall return Originating Lender's Interest of the amounts recovered to Originating Lender.

#### 12. Miscellaneous.

- (a) Neither the execution of this Agreement, nor the sharing in a Loan, the Collateral, or the Loan Documents, nor any agreement to share in profits or losses resulting from the transaction, is intended to be, nor shall it be construed to be, the formation of a partnership or joint venture between Originating Lender and RDFC.
- (c) This Agreement, including the Commitment Letter, supersedes any prior negotiations, discussions, or communications between Originating Lender and RDFC and constitutes the

entire agreement of Originating Lender and RDFC with respect to a Loan, and shall survive any foreclosure of Collateral. This Agreement constitutes the entire agreement of the parties herein and supersedes any and all prior agreements, written or oral, as to the matters contained herein. This Agreement may be amended, modified, renewed or extended only by written instrument executed by Originating Lender and RDFC.

- (d) Neither Originating Lender nor RDFC has, as of the date of this Agreement, any loans or any other direct or indirect financial accommodations to, or financial interest in, Borrower, or any principal or affiliate of Borrower, which has not been disclosed in writing to the other party to this Agreement.
- (e) In the event any provision of this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired in any way.
- (f) The failure to exercise, or delay in exercising, any right under this Agreement by either party shall not operate as a waiver of that right, and the single or partial exercise of any right under this Agreement by either party shall not preclude the further exercise of the right or the exercise of any other right. Any remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.
- (g) Any notice required or permitted to be given by Originating Lender or RDFC upon the other is given in accordance with this Agreement if it is directed to such other party by delivering it personally to the other party, or if mailed by United States registered or certified mail, return receipt requested, postage prepaid, to the address indicated for Originating Lender or RDFC, respectively, or to a different address, if indicated in writing by the party receiving such notice.
- (h) This Agreement, its construction, interpretation and enforcement and the rights and obligations of the parties hereto hereunder shall be determined under, governed by, and construed and interpreted in accordance with, the laws of the State of North Dakota, without regard (excluding the laws applicable to principles of conflicts or choice of law of). Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- (i) Originating Lender and RDFC each unconditionally submit, for themselves and their property, to the exclusive jurisdiction of any state or federal court with jurisdiction over Burleigh County, North Dakota in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of Originating Lender and RDFC hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such North Dakota court or, to the extent permitted by law, in such federal court. Each of Originating Lender and RDFC hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner

provided by law.

Originating Lender and RDFC each has caused this Agreement to be executed by a duly authorized officer all as of the day and year first set forth above. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement.

Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**ORIGINATING LENDER  
FINANCE CORPORATION**

**RURAL DEVELOPMENT**

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_  
PO Box 727  
3201 Nygren Drive NW  
Mandan, ND 58554

\_\_\_\_\_  
Its: Executive Director

Disclosure

The Rural Development Finance Corporation holds a money brokering license and is regulated by the North Dakota Department of Financial Institutions.

The North Dakota Department of Financial Institutions can be reached at:

2000 Schafer Street, Suite G  
Bismarck, ND 58501-1204  
Phone: 701-328-9933  
Fax: 701-328-9955

---

Borrower

---

Date

**PARTIAL  
ASSIGNMENT  
OF  
PROMISSORY NOTE**

This Assignment made effective the \_\_\_\_\_ day of [MONTH], [YEAR], by Assignor:

1. ***Definitions.*** For the purposes of this Assignment:

a. “Assignor” shall mean [NAME], a [FEDERAL/STATE] lending institution,  
with its address at [ADDRESS].

- b. "Assignee" shall mean Rural Development Finance Corporation, a North Dakota corporation, with its address at 3201 Nygren Drive NW, Mandan, North Dakota 58554.
- c. "Assignee's Interest" shall mean [PERCENT] of the Promissory Note which shall be assigned by Assignor to Assignee in accordance with this Assignment and the Participation Agreement.
- d. "Assignment" shall mean this Partial Assignment of Promissory Note.
- e. "Borrower" shall mean the original borrower as specified in the Promissory Note.
- f. "Collateral" shall mean any collateral, whether real or personal property, securing payment of the indebtedness evidenced by the Promissory Note or the performance of Borrower's obligations thereunder or the performance of any guaranty, together with any property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, and all proceeds of any such proceeds.
- g. "Participation Agreement" shall mean that certain Participation Agreement by and between Assignor and Assignee and setting out the terms of Assignee's participation in the Loan (as defined therein) from Assignor to Borrower.
- h. "Promissory Note" shall mean that certain promissory note dated effective [DATE], in the principal sum of [AMOUNT] Dollars, made by Borrower in favor of Assignor.

2. **Assignment.** Assignor hereby assigns, grants and conveys to Assignee Assignee's Interest in the Promissory Note and in the Collateral in accordance with the Participation Agreement. This assignment is an absolute and unconditional assignment of Assignee's Interest for the purpose of collection and shall not be deemed to merely create a security interest.

a. Except as provided herein or in the Participation Agreement, the rights and obligations of Assignor and Assignee in the Promissory Note and the proceeds thereof shall be pari passu with respect to one another.

b. This Assignment, the Participation Agreement and the Loan Documents (as defined in the Participation Agreement) shall, insofar as possible, be read and interpreted as to minimize conflicts with one another. Notwithstanding the foregoing, in the event of a conflict between the provisions of this Assignment and a corresponding provision in the Participation Agreement, the provision set forth in the Participation Agreement shall control and govern.

3. **Assumption of Covenants.** This Assignment is subject to all of the covenants of Assignor in the Promissory Note, which the Assignee hereby assumes and agrees to perform, provided that, to the extent that any such covenant contemplates an expenditure of money on the part of Assignor, Assignee shall only be obligated to perform such covenants pro rata with Assignee's Interest.

4. **Warranties.** The assignment of the Proceeds is made on a strictly "as is" basis without representation or warranty of any kind, except as may be set out herein or in any other Loan Document (as defined in the Participation Agreement). Notwithstanding the foregoing, Assignor does warrant to Assignee, as of the date of this Assignment that:

(1) that Assignor has good and lawful title to the Promissory Note and has good right to assign to Assignee the Promissory Note and Assignee's Interest in the manner and form set forth in this Assignment.

(2) that the Assignment contemplated by this Assignment shall validly convey to Assignee Assignee's Interest in the Promissory Note and that the person executing this Assignment on behalf of Assignor is authorized to do so.

(3) that Assignor does not know or have reason to know that any representation, warranty, or covenant made by Borrower or Assignor and contained in any loan application or any Loan Document, contains any untrue statement of any material fact or omits to state a material fact necessary in order to make such statement, in the light of the circumstances under which they were made, not misleading.

(4) that the Promissory Note is free from all encumbrances.

5. **Benefit.** This Assignment shall benefit, and shall be binding upon, the parties and their respective heirs, devisees, legal representatives, successors and assigns.

6. **Notices.** Any notice required or permitted to be given by Assignor or Assignee upon the other is given in accordance with this Assignment if it is directed to such other party by delivering it personally to the other party, or if mailed by United States registered or certified mail, return receipt requested, postage prepaid, to the address indicated for Assignor or Assignee, respectively, or to a different address, if indicated in writing by the party receiving such notice.

7. **Governing Law.** This Assignment, its construction, interpretation and enforcement and the rights and obligations of the parties hereto hereunder shall be determined under, governed by, and construed and interpreted in accordance with, the laws of the State of North Dakota, without regard (excluding the laws applicable to principles of conflicts or choice of law of). Any provision of this Assignment, which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

8. **Venue/Jurisdiction.** All parties unconditionally submit, for themselves and their property, to the exclusive jurisdiction of any state or federal court located with jurisdiction over Burleigh County, North Dakota in any action or proceeding arising out of or relating to this Assignment, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such North Dakota court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

9. ***Entire Agreement; Amendment. This*** Assignment constitutes the entire agreement of the parties herein and supersedes any and all prior agreements, written or oral, as to the matters contained herein. This Assignment may be amended, modified, renewed or extended only by written instrument executed by Assignor and Assignee.

IN WITNESS OF ITS TERMS AND CONDITIONS, the Assignor has executed this Assignment.

[NAME], Assignor

By:

[NAME and OFFICE]

#### **Section 10: Resolution from The Board of Directors**

A resolution by the intermediary's Board of Directors is required before you apply for MPILP funding. Minimally, the intermediary's executive director must make the organization's Board of Directors aware that the organization is considering entering into an agreement to fulfill the terms of – and report on – Rural Development's MPILP grant.

#### **Section 11: Affirmation and Certification**

I affirm and certify the following:

1. The intermediary is domiciled in a state or U.S. Territory, and is one of the following types of entities:
  - a. Private, nonprofit corporation
  - b. Public agency
  - c. Federally recognized Tribe
  - d. Cooperative
2. The intermediary has the legal authority to carry out the proposed grant purposes.
3. If the intermediary is an affiliate of another entity, the intermediary's governing board is independent of the affiliated entity.
4. The intermediary is not debarred or suspended by the federal government, nor is the intermediate an affiliate of a debarred or suspended entity.
5. The intermediary's SAM.gov registration is active at the time of application.

6. The intermediary acknowledges it will be checked against the federal Do Not Pay portal at the time of application, prior to any obligation of MPILP grant funds, and again at the time of each federal disbursement of MPILP grant funds.
7. The intermediary has the capacity to conduct outreach, marketing, and underwriting of loan applications, and to provide the servicing and monitoring of its proposed MPILP Revolving Loan Fund portfolio.
8. If the intermediary cannot meet the requirement for loan making and servicing experience, the intermediary will apply for an exception on the grounds that the intermediary:
  - a. itself has a proven record of successfully assisting (other than through lending) meat or poultry processors through technical assistance or business development projects to processors
  - b. will, before the MPILP grant is obligated, employ individuals with loan making and servicing experience, and qualifications and expertise for the operation and administration of an MPILP revolving loan fund as described in the notice of funding opportunity. **NOTE:** Employees must not be contracted staff and staff from affiliates of the intermediary.
9. The intermediary employs staff with loan making and servicing expertise and does not need to contract employees to perform day-to-day lending operations.
10. The intermediary's balance sheet has capital or equity to sustain its lending and business operations.
11. At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary is composed of U.S. citizens or permanent U.S. residents.
12. The intermediary and its principals do not have any delinquent debt to the U.S. Federal Government.
13. The amount of the grant, together with other funds available, is adequate to ensure the establishment or continuation of an effective MPILP revolving loan fund, or to achieve the purposes for which the grant is made.
14. The intermediary will inform Rural Development if it is currently under – or subsequently comes under – a consent order from a federal or state agency.
15. The intermediary maintains written standards of conduct covering conflicts of interest.
16. The intermediary maintains internal audit and management control systems to evaluate and monitor loan portfolios.
17. The intermediary was **not** established for the financial benefit of an affiliate through loan participations.

18. The intermediary will not predominantly use MPILP grant funds for the financial benefit of an affiliate through loan participations.
19. The intermediary holds policies for fidelity bond coverage or employee dishonesty insurance that protects the intermediary from losses incurred as a result of theft by its employees.
20. The intermediary must not use more than \$10 million in MPLIP grant funds for any single loan to an ultimate recipient.
21. The intermediary must only loan funds to ultimate recipients who reside in – and whose projects are located in – the U.S.
22. I understand that USDA Rural Business-Cooperative Service (RBCS) will rely on the accuracy of the submissions and certifications made with this application. Any misrepresentation or inaccurate information can render an application ineligible, or cause forfeiture of grant funds. I further understand I may be required to submit backup documentation proving the accuracy of my answers.
23. I understand that signing this document does not constitute grant approval by USDA RBCS.