



Ohio Department of Agriculture
Ohio Rural Development Partnership
 8995 East Main Street
 Reynoldsburg, OH 43068-3399
 Phone: (614) 995-1490
ruraldev@mail.agri.state.oh.us

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WEB FORM: 2201-004
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LOAN AND GUARANTEE AGREEMENT

This section to be completed by the Director of Agriculture.

This Loan and Guarantee Agreement (the "Agreement") is made and entered into this _____ day of _____, 2006, by and among the Director of the Ohio Department of Agriculture (the "Director"), _____ (the "Bank"), and _____ (the "Borrower").

BACKGROUND INFORMATION

- A. Bank proposes to make a loan to Borrower (the "Bank Loan") in the amount of _____ dollars (\$_____) evidenced by a note dated _____, 2006, (the "Note") for the purposes and upon the security described in the commitment Letter dated _____, 2006, which has previously been delivered to the Bank (the "Commitment Letter"); and
- B. One of the considerations for the making of the Bank Loan by Bank to Borrower is that the Director guarantee Bank against up to 40% of any loss (the "Guarantee") in accordance with the terms and provisions of the commitment Letter and this Agreement; and
- C. The Guarantee shall be in the form of a deposit of funds in the amount of \$_____ to the Bank pursuant to Controlling Board Action dated _____, 2006, which funds shall be on deposit at Bank as a Cash Account (the "Cash Account"); and
- D. The Director has determined that such Guarantee, under the terms and conditions set forth in the Agreement, is warranted and necessary pursuant to Ohio Revised Code Section 901.83.

STATEMENT OF THE AGREEMENT

NOW THEREFORE, in consideration of the mutual promises herein contained, as each to the other made, Bank, Borrower and the Director represent and agree as follows:

1. **Use of Proceeds** The DIRECTOR authorizes BANK to disburse BANK LOAN directly to Borrower as contemplated herein and Borrower will use proceeds of the BANK LOAN solely for the purposes set forth in the COMMITMENT LETTER.

2. **Interest Rate** BANK agrees that the rate of interest charged on the Bank loan with respect to the percentage guarantee by the Director shall not exceed the fixed rate of five percent (5%).

3. **Cash Account** Bank shall deposit the funds in a certificate of deposit account in the name of _____ Ohio Family Farm Loan Guarantee Account that shall be insured by an FSLIC or FDIC policy. The certificate of deposit account number shall be _____, and the account representative shall be _____. The Bank shall immediately notify the Director of any changes in the account number or account

4. **Interest Earned on Cash Account** The Cash Account shall bear interest as is reasonable for the type of account but not less than one (1) percent. Each year in which the Loan is outstanding, on a date determined by the Director, the Bank shall pay interest to the Director in an amount equal to one (1) percent of the interest earned on the balance of the Cash Account for the past year. The remainder of the interest earned on the Cash Account shall be used by the Bank as it sees fit in the administration of this Agreement.

5. **Borrower's Warranties and Covenants** The Borrower hereby warrants and represents as follows:
 - a. **Reimbursable Costs** Borrower will, on demand, reimburse Bank and the Director, respectively, for any and all expenses incurred, or which may hereinafter be incurred, by Bank or the Director in connection with or by reason of Borrower's application for, and the making, guaranteeing and administration of the Bank Loan.

 - b. **Books, Records and Reports** Borrower will at all times keep proper books and records of account in a manner satisfactory to the Bank and the Director.

 - c. **Copies of Records** Borrower hereby authorizes Bank and the Director to make or cause to be made, at Borrower's expense (a) copies of books, records and papers in the custody or control of the Borrower or others, relating to Borrower's financial and business condition; and (b) inspection and appraisals of any of the Borrower's assets.

 - d. **Annual Statements** Borrower shall furnish to the Bank or the Director for a twelve-month period ending December 31st of each year, (no later than two months following the expiration of any such period) and at such other time, and in such form as either Bank or the Director may prescribe, Borrower's financial and operating statements.

6. **Bank Warranty** The Bank shall use its best efforts (1) to ascertain the accuracy of the information provided by Borrower and used in the Bank's determination of credit worthiness and (2) to ensure that the Note and accompanying documents completed by the Borrower (hereinafter collectively referred to as the "Bank Loan Documents"), are sufficient to evidence and enforce the rights and obligations of Bank and Borrower with respect to the Bank Loan. The Bank's best effort shall be fulfilled by efforts consistent with both those procedures common in the Banking industry and in the Bank.

7. **Disbursement** Prior to disbursement of the Bank Loan to the Borrower, Bank shall receive:
 - a. The Note, instruments of hypothecation (containing covenants with respect to the payment of taxes and other charges which constitute prior liens on any real or personal property required as collateral and premiums on the insurance policies required pursuant to paragraph 8(b) hereof), agreements, documents, lease assignments, and evidence required by the Commitment Letter as conditions precedent to such disbursement;

 - b. Insurance policies (together with evidence of premium payment) covering the property constituting collateral for the Bank Loan against such risks and in such amounts and form and issued by such companies as shall be satisfactory to the Bank, containing an appropriate loss payable clause in favor of the holder of the Note as its interest may appear;

 - c. Satisfactory evidence, consistent with both procedures common in the Banking industry and in the Bank, that since the date of Borrower's last financial statement submitted in connection with the Bank Loan, there has been no adverse change in Borrower's financial condition, organization, operations, business prospects, fixed or other properties, personnel or any condition of Borrower which is sufficiently serious in the opinion of Bank to warrant withholding disbursement on account of the Bank Loan and which has not been prudently remedied.

8. **Condition for Disbursement** The following shall be a condition precedent for the disbursement of the Cash Account; the Bank Loan shall be disbursed by Bank directly to Borrower subject to the terms and conditions set forth in the Commitment Letter.

9. **Sharing of Collateral** Any and all security or guarantees of any nature including but not limited to rights of set-off and counterclaims which Bank holds or may receive further to secure Bank with respect to the Bank Loan, or which the Director may acquire in connection with the Bank Loan, shall secure the interest of both the Bank and the Director in the Bank Loan. Bank shall include and list the Director on all Uniform Commercial Code Filings and any and all other security instruments which relate to the Bank Loan.

10. Administration of the Bank Loan

- a. Bank shall hold the Bank Loan Documents and shall receive all payments of principal and interest on the Bank Loan until such time as delivery of such documents to the Director may be required pursuant to paragraphs 14 to 15 of this Agreement.
- b. Bank shall not, except to the extent permitted by the Commitment Letter, without the prior written consent of the Director, (i) make or consent to any alterations in the terms of the terms of the Bank Loan Documents; (ii) make or consent to any release, substitution, or exchange of any of said collateral; (iii) accelerate the maturity of the Note, except in the event the Bank reasonably determines that the underlying collateral is impaired; (iv) sell, assign, or transfer the Bank Loan Documents; (v) sue upon the Bank Loan Documents; (vi) waive or agree to waive any claim against Borrower or any guarantor, standby creditor, or other obligor in connection with the Bank Loan; or (vii) in accordance with authority contained in any security instrument held by the Bank evidencing a prior lien on property taken as security for this Bank Loan, increase the amount due on such lien.

11. Requirements of the Bank The Bank shall be required to do the following:

- (a) Bank shall complete the check receipt, a copy of which is attached hereto and made a part hereof and return it to the Director within ten (10) days of receipt of the funds.
- (b) Bank shall deliver to the Director such information, advice, or confirmed copies of the Bank Loan Documents in connection with the Bank Loan as the Director may request.
- (c) Bank shall deliver annual reports on the status of the Bank Loan as of June 30 of each year.
- (d) Bank shall deliver notice to the Director thirty (30) days before a foreclosure or other type of sale is held by the Bank to recover any delinquent amount of the Bank Loan.

12. Notice: Events of Default In the event the Bank is authorized, by virtue of a failure to make payment when due or by virtue of any other default by Borrower, to declare all or part of the indebtedness immediately due and payable, as so provided in the terms and conditions of the Note, Bank shall notify the Director in writing within thirty (30) days after it has knowledge of the events of default on which its authority is founded, unless the Borrower shall have cured such default in the meantime. In the event the Bank desires to accelerate the indebtedness pursuant to the terms and conditions of the Note, the request for the written consent of the Director required by Section 13 hereof may be made a part of that notice.

13. **Instructions from the Director** Within thirty (30) days after receipt of notice that the Bank Desires to accelerate the indebtedness as above provided, the Director shall advise the Bank whether the Bank may accelerate the indebtedness and proceed to enforce the security therefor, or may take other action provided; however, that nothing in this Agreement shall preclude the Bank from applying for a receiver of any or all of the collateral if the Bank shall deem it necessary for the protection of the collateral. In the event the Director fails to take any action within such thirty (30) days, such inaction shall be deemed prior written consent to sue upon the Note and Bank Loan Documents, to foreclose on any collateral, and to accelerate the Note. In the event the enforcement of any and all security agreements, personal guarantees, corporate guarantees or other security interests shall result in recovery of less than an amount equal to the unpaid principal balance of the Bank Loan plus accrued interest thereon and any other amounts owed to the Bank in connection with the Bank Loan, then Bank, upon submission to the Director of evidence reasonably satisfactory to the Director of the amount of the recovery, shall follow procedures which will reimburse the Bank Loan guaranteed by the Director; provided, however, that the Bank may not be reimbursed in an amount which exceeds the sum of the unpaid principal balance of the Bank Loan plus accrued interest not to exceed ninety (90) days thereon, multiplied by the percentage of the Bank Loan guaranteed by the Director. Bank shall not be reimbursed, except as expressly permitted under this Agreement. In the event the Bank shall realize from the security more than an amount equal to the unpaid principal balance of the Bank Loan plus accrued interest thereon and any other amounts owed to the Bank in connection with the Bank Loan, then the Bank shall return such excess to Borrower, and the Bank shall make an accounting to the Director.
14. **Assignment of Interest in this Agreement** Except as may be required by law, neither the Bank nor the Director shall assign, in whole or in part, its rights and obligations under this Agreement without the prior written consent of the other party, but nothing herein shall prevent the Bank from granting to other financing institutions participation shares in its interest in the Note, provided, however, that the Director shall recognize and deal only with the Bank.
15. **Termination of Agreement** The Director shall be released from any obligation hereunder, unless the Bank has substantially complied with all the provisions of this Agreement, or upon the happening of any one or more of the following events:
- (a) Failure of Bank to close and disburse the Bank Loan substantially in accordance with the terms and requirements of the Commitment Letter or the servicing of the Bank Loan in a negligent manner, which in either case results in a substantial loss on the Bank Loan; or
 - (b) Payment in full of the amount of the Note; or
 - (c) Receipt by the Director of written notice from Bank of termination of this Agreement. Upon Borrower's repayment of Bank Loan, Bank shall, within thirty (30) days of such repayment, return to the Director any and all balances remaining in the Cash Account.

- 16. **Payment of Expenses** Subject to Section 126.07 of the Ohio Revised Code, payments or recoveries under or upon the Bank Loan from Borrower, or other sources, as well as all reasonable expenses (including advances for the care, preservation and maintenance of collateral securing the Loan) incurred by the Director or Bank, shall be shared ratably by the Director and Bank in accordance with their respective interests in the Bank Loan. The ratable proportion of the expenses shall be paid by the Director within ninety (90) days of such expenses being incurred and reported to the Director.
- 17. **Source of Payment** Any and all payments by the Director pursuant to this Agreement shall be secured solely by and made solely from the Director's Loan to Bank, which shall be on deposit at the Bank as the Cash Account.
- 18. **Annual Excess Cash Payment to the Director** An interest-bearing Certificate of Deposit placed with the Bank shall equal no less than an amount equal to the percentage of the guarantee of the Bank Loan. The Department of Development shall forward to the Bank an annual invoice which shall be paid by the Bank accordingly. The annual payment shall equal _____% of the annual principal reduction of the Bank Loan plus one percent (1%) of the interest earned on the Cash Account for the past year.
- 19. **Discrepancies in Documents** If any discrepancy exists between the terms of the Bank Loan Documents and this Agreement, the terms of this Agreement shall prevail.
- 20. **Miscellaneous Provisions** The Guarantee of the Director shall not constitute a general obligation of the State of Ohio or any political subdivision. No monies raised by taxation, other than those expressly obligated herein, shall be obligated for payment of the Director's Guarantee. All obligations of the Director pursuant to this Agreement shall be subject to the provisions of Section 126.07 of the Ohio Revised Code.
- 21. **Program Promotion and Release of Information** The Ohio Department of Agriculture reserves the right to release the name and location of Borrower and lender, amount of the guarantee award, and basic project information to the media for the purpose of publicizing the Family Farm Loan Guarantee Program. ***Borrower's personal financial information will not be released.***

IN WITNESS WHEREOF, the parties hereto have caused this Loan and Guarantee Agreement to be executed by their respective officers thereunto duly authorized on the day and year first above written.

Signed in the presence of:

DIRECTOR:

The Director of the Ohio Department of Agriculture

By:

Fred L. Dailey, Director

BANK:

By:

Title:

BORROWER:

By:

Title:

STATE OF OHIO)

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SS:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, the Director of the Ohio Department of Agriculture, who acknowledged that he/she did sign the foregoing instrument herein and that such signing is the free act and deed of said person on behalf of the Director for the uses and purposes therein mentioned.

Notary Public

STATE OF OHIO)

)

SS:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, the Director of the Ohio Department of Agriculture, who acknowledged that he/she did sign the foregoing instrument herein and that such signing is the free act and deed of said person on behalf of the Director for the uses and purposes therein mentioned.

Notary Public

STATE OF OHIO)

)

SS:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____

_____, 2006, by _____ and
_____, owners, who acknowledged that he/she/they did
sign the foregoing instrument herein and that such signing is the free act and deed of said person on
behalf of the operation for the uses and purposes therein mentioned.

Notary Public