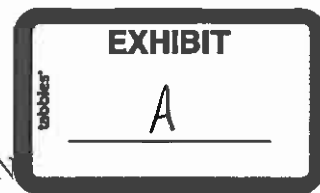


12-424



REVOLVING LOAN FUND AND MICROENTERPRISE LOAN FUND AND
ADMINISTRATION AGREEMENT
BETWEEN THE COUNTY OF SUMMIT, OHIO
AND CASCADE CAPITAL CORPORATION

This agreement for the administration and operation of a Revolving Loan Fund and MicroEnterprise Loan Fund (the Plan) is made by and between the County of Summit (County), an Ohio charter county, having its principal place of business located at 175 North Main Street, Akron, Ohio 44308 and Cascade Capital Corporation (Company) an Ohio corporation, having its principal place of business located at One Cascade Plaza, 18th Floor, Akron, Ohio 44308.

WHEREAS, County has recognized a need within the community for funding for start-up ventures and expansion of existing small to mid-sized companies for the purposes of creating and retaining jobs available to members of the Low to Moderate Income community; and

WHEREAS, County through it's Department of Community and Economic Development, has Community Development Block Grant (CDBG) funds available for the establishment of a Revolving Loan Fund and MicroEnterprise Loan Fund under 24 CFR 570.500; and

WHEREAS, Company has funds that it also wishes to contribute for the funding of small business ventures within Summit County and experience with publicly financed lending programs;

Now therefore the parties agree as follows:

Loan Fund Descriptions

Revolving Loan Fund:

The Revolving Loan Fund (RLF) is established to carry out eligible economic development activities which, in turn generates program income to the fund. This is a fund from which moneys are expended (in the form of eligible loans), replenished (by repayment of those loans) and expended again. Loans are provided to both start up companies and companies of a going concern. Consistent with CDBG requirements projects funded must benefit Low to Moderate Income (LMI) individuals and/or areas by creating or retaining jobs within the private sector for LMI individuals within the County. As such, the primary LMI individuals to be served are those that will be hired and retained by the company as a result of the loan. For example, loans will be made to an existing company for the expansion of a facility providing that the expansion results in the creation of a certain number of jobs for LMI individuals. Unlike the MicroEnterprise Loan, the owners of the company themselves do not need to be LMI individuals. Where possible these loans are also intended to help diversify the local economy and encourage the redevelopment of blighted or deteriorated areas. These loans are not a substitute for private sector financing. The source of funds for County funded RLF loans is the

Community Development Block Grant Program for Economic Development which originates from the U.S. Department of Housing and Urban Development.

Microenterprise Loan Fund:

The MicroEnterprise Loan Fund (MLF) is designed to stimulate economic growth and create businesses and jobs that will improve the living conditions of residents in the Low to Moderate Income community. This is a fund from which moneys are continuously expended (in the form of eligible loans), replenished (by repayment of those loans) and expended again. The program is used for small start up businesses that meet a CDBG eligible outcome. Companies selected for such loans typically have five or fewer employees including the owners. The owner of the business typically has an annual income that is 80 percent or less of the county's median household income, adjusted for size. In short, the primary LMI individual that will benefit from the MicroEnterprise Loan is the owner of the assisted business, with secondary LMI beneficiaries being the employees of the business. These loans are not a substitute for private sector financing. The source of funds for County funded MicroEnterprise loans is the Community Development Block Grant Program for Economic Development which originates from the U.S. Department of Housing and Urban Development.

I. Plan Capitalization

1. County shall initially contribute \$150,000 ("County Funds") to the establishment of the Plan. County Funds shall be distributed as follows:
 - a. Up to \$7,500 will be available annually to Company as an administrative fee (see Section VI, subsection 3).
 - b. \$50,000 will be available for use in the Microenterprise Loan Fund with a requirement that these funds be made available to parties of low to moderate income.
 - c. Remaining funds of \$92,500 will be available for use in the Revolving Loan Fund for use by new or existing business for use as working capital or for fixed asset purchases with the requirement of job creation in the low to moderate income range.
 - d. In subsequent plan years, County will issue a notice to Company of additional funding to be contributed upon receipt of County's CDBG funding allocation.

2. Company shall designate an amount not to exceed \$250,000 (Cascade Capital Funds) which may be used for making loans concurrently with the Microenterprise Loan Fund and the Revolving Loan Fund. Such loans made by Company shall not be subject to the income requirements, the job creation requirements of the Plan, Davis-Bacon wage requirements or other CDBG requirements.

II. Creation of the Plan

The Plan must be consistent with the County of Summit's Five Year Consolidated Plan as approved by HUD, and will become effective once approved by the Summit County Executive and Summit County Council.

The relevant sources of guidelines, rules and law affecting the operation of this Plan include but are not limited to:

- o Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- o The Housing and County Development Act of 1974
- o The Code of Federal Regulations (24 CFR Part 570-580)
- o National Environmental Policy Act of 1969
- o Policy memoranda issued by the U.S. Department of Housing and Urban Development.

Whenever the requirements of the Plan conflict with any rule, regulation or guideline from any of the sources set forth above, the authority of the published source shall supersede the requirements of the Plan.

III. Geographic Limits of the Plan

Loans made through the Plan from County Funds are available to any business or industry involved with an eligible project which is (or will be) physically located within the County of Summit but outside the boundaries of the cities of Akron, Barberton and Cuyahoga Falls. This geographic limitation does not apply to Cascade Capital Funds which must only be spent within the geographic limits of Summit County.

IV. Term of the Agreement

The term of this Agreement shall be from the date of last signature below and shall continue for the period of two years with one option to renew for an additional two years.

V. Structure of the Plan

1. Revolving Loan Fund and MicroEnterprise Loan Fund Committee: The Revolving Loan Fund and MicroEnterprise Loan Fund Committee (Committee) will be established to oversee the operation of the Plan and its programs including the making of loans from these funds. The Committee will have 12 members representing a broad cross-section of the community including low to moderate income (LMI) individuals, minority representatives, those with lending experience and representatives of the County's interests. Members of the Committee are not compensated and shall be appointed as follows:

- a. Four members appointed by the County Executive.
- b. Three members from the LMI community appointed by the County Executive.
- c. Five members appointed by Company and with the following qualifications
 - 1. One Certified Public Accountant
 - 2. Two members from the private sector lending community
 - 3. Two other member appointed by Company
- d. Two ex-officio members who are non-voting members:
 - 1. County of Summit Director of Law Insurance and Risk Management
 - 2. Plan Administrator.

2. Plan Administrator: The Plan Administrator (Administrator) shall be an employee of Company who will be responsible for the day to day operations of the Plan and its programs.

3. Voting: A quorum shall consist of two thirds (2/3) of the voting members of the Committee. A quorum must be present at any meeting during which the committee is voting on a loan approval. A 2/3 majority of members present is necessary for loan approval.

VI. Duties of the County, the Committee and the Administrator

1. The County shall:
 - a. Review and approve the policies and procedures established by the Committee for the operation of the Plan
 - b. Monitor the operation of the Plan, and the decision making of the Committee to ensure compliance with 24 CFR 570.500 and 570.204.
 - c. Fund loans meeting CDBG qualifications from the County Funds.
 - d. Maintain County Funds and program income in a segregated account. All loan repayments, interest earnings, fees charged, and any other program income must be deposited within the RLF or MicroEnterprise Loan Fund.
 - e. Remit program interest to HUD.
 - f. Monitor all projects for compliance with the Davis-Bacon Act.
 - g. Assist Administrator in developing loan documents for County Funds
2. The Committee shall:
 - a. Request from the County certification as a Community Based Development Organization (CBDO).
 - b. Establish policies and procedures for the Revolving Loan Fund Program and the MicroEnterprise Loan Fund Program and review the procedures periodically if necessary due to changes in the relevant regulations, or for any other reason. Such policies and procedures will be submitted for approval to the County.
 - c. Evaluate loan applications taken in by the Administrator and determine which projects to fund, and whether to fund the project out of the County Purpose of the MicroEnterprise Loan Fund Program Funds or the Cascade Capital Funds. Analysis shall include:
 - i. Whether the project meets the program thresholds
 - ii. Sufficiency of collateral or personal guarantee
 - iii. Applicant's ability to repay the loan
 - iv. Reasonableness of job creation assumptions
 - v. Need for and availability of job training and placement programs
 - vi. Reasonableness of cash flow projections
 - d. Upon approval, issue to the applicant a loan commitment letter and term sheet.
 - e. Consider requests to restructure loans, and may take prudent and reasonable steps toward ensuring that the project/business under review stays viable, and that jobs that were created are maintained.
 - f. Monitor the day to day operation of the Plan by the Administrator.
 - g. Determine whether to pursue remedies under the loan agreement against a client who is in default.

- h. Report to County on the progress of the Plan.
- 3. With respect to both the County Funds and the Cascade Capital Funds the Administrator shall:
 - a. Conduct the day to day operations of the Plan which may include:
 - i. Seeking additional sources of funds to supplement the County Funds and the Cascade Capital Funds
 - ii. Preparing the Committee meeting agenda.
 - b. Advertise the availability of the loans with the Plan to individuals who meet the target criteria.
 - i. This can include marketing the program to local financial institutions, business development organizations and through conducting seminars, however all marketing programs and materials must be approved by County.
 - c. Take loan applications, verify qualifications and perform credit analysis of applicants and present the applications to the committee.
 - d. Prepare the necessary loan documents depending on the source of the funds for the loan including:
 - i. Ensuring that any necessary approvals have been obtained from the Ohio Historical Society, the Ohio Environmental Protection Agency, or any other relevant agency.
 - ii. Obtaining an intercreditor agreement if existing private funding is already in place (see Appendix A).
 - e. Holding loan closings.
 - f. Upon closing of each loan made using County Funds, apply for a payment from the funds set aside for administrative fees. Each loan successfully closed is eligible for payment of \$1,250 in administrative fees not to exceed \$7,500 in total.
 - g. Service all loans, whether made from County or Cascade Capital Funds.
 - h. For loans funded by County Funds collect wage reports from contractors providing construction work on eligible projects on the same schedule as that contractor completes payroll (e.g. weekly or bi-weekly) and submit these wage reports to County.
 - i. Remit payments made to the County for loans funded by County Funds.
 - j. Provide performance reports on the Plan to the Committee, including notifying the committee of any default by a party to a Plan loan, regardless of the source of funds for the loan.
- 4. Other than from designated Cascade Capital Funds, Company is not obligated to pay for any out of pocket costs in the performance of its duties as set forth in this agreement.

VII. Reporting

- 1. Committee shall provide a report to the County
 - a. Quarterly audit report detailing the status of each outstanding loan.
- 2. Administrator shall provide to the Committee the following reports

- a. Quarterly Aging Report
 - b. Quarterly Success at achieving loans within the target criteria
 - c. Quarterly job creation achievement
3. Annually the County shall report to HUD
 - a. CAPER/Action Plan reporting

VIII. General Terms and Conditions

A. Conflicts of Interest

Elected officials, County employees, Committee members and other individuals involved in the Plan shall not engage in conduct which would give the appearance of a conflict of interest. CDBG regulations (24 CFR part 570.611) specifically prohibit any conflict of interest, and individuals are expected to abstain from voting or otherwise taking action on any matter which may result in a conflict of interest. A conflict of interest occurs when a person who is affiliated with the County as recipient, or Company as subrecipient of funds under CDBG regulations who exercises any functions or responsibilities with respect to these CDBG activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities (Committee members and Administrator), obtains a financial interest or benefit from a CDBG-assisted activity, or has a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity (i.e. a recipient of a loan under these programs), or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

B. No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed to be or to create a joint venture or partnership between the County and Company.

C. Independent Contractor. It is mutually understood and agreed that the Company, Company's employees, agents and anyone working on behalf of the Company are independent contractors and are under the sole direction and control of the Company.

D. Reports and Records. Company shall maintain and provide to the County upon demand the following records and reports: Accounting and fiscal records adequate to enable the County and/or the State of Ohio to audit and otherwise verify claims for reimbursement, and other records and reports as required by the County to enable it to comply with local, state and federal statutes and regulations. The County shall have the right to audit which includes the right of the County's internal auditing department to access any proprietary software and hardware systems to audit and verify compliance including but not limited to generating system reports and summaries, verifying passwords and other security protections and verifying proper functioning. Company shall maintain all records related to this Agreement and the administration of the program for four (4) years after the County makes final payment hereunder and all other pending matters are closed. If any litigation, claim, negotiation, audit, or other action involving

the records has been started before the expiration of the four (4) year period, Company shall retain the records until completion of the action and all issues that arise from it or until the end of the three year period, whichever is later.

F. Termination without Cause. County reserves the right to terminate this Agreement or any part of this Agreement for its sole convenience. In the event of termination under this paragraph, Company will immediately stop all work and will immediately cause any of its suppliers or subcontractors to cease all work related to this Agreement. County will pay Company for all services satisfactorily performed prior to notice of termination.

G. Termination for Cause. County will have the unrestricted right to terminate this Agreement without any obligation to Company upon the happening of any one or more of the following events:

- (a) Company's insolvency or commission of an act affecting or evidencing bankruptcy;
- (b) Filing voluntary or involuntary petition of bankruptcy by or against Company;
- (c) Appointment of a receiver for Company by any Court of competent jurisdiction;
- (d) Company's failure to provide services within the time specified by this Agreement or any previous agreement;
- (e) Company's failure to perform any other provisions of this agreement or previous agreements; and
- (f) Cancellation of any government contract for which this Agreement is issued.

The acceptance of services after the occurrence of any of the above named events will not affect the right of County to terminate under this paragraph.

H. Compliance. Company agrees that in the hiring of employees for the performance of work under this Agreement, the Company, its subcontractors, or any person acting on Company's or its subcontractor's behalf, by reason of race, creed, sex, disability, military status as defined in section 4112.01 of the Ohio Revised Code, color, gender identity as defined in Section 101.02(f) in the Codified Ordinances of the County of Summit and sexual orientation as defined in Section 101.02(r) in the Codified Ordinances of the County of Summit, shall not discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the work to which the employment relates. Company further agrees that Company, its subcontractors, or any person on Company's or its subcontractor's behalf, in any manner, shall not discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, sex, disability, military status as defined in section 4112.01 of the Ohio Revised Code, color, gender identity as defined in Section 101.02(f) in the Codified Ordinances of the County of Summit and sexual orientation as defined in Section 101.02(r) in the Codified Ordinances of the County of Summit. Company certifies it does not maintain and it will not permit its employees from performing services at any segregated facilities. Company agrees to comply with all applicable federal, state and local laws, orders, rules, and regulations.

I. Drug Free Workplace. Company will comply with all applicable Ohio laws regarding maintaining a drug free workplace. Company will make a good faith effort to

ensure that all its employees, while working on County property, do not possess and will not be under the influence of illegal drugs or alcohol or abuse prescription drugs.

J. Insurance. Company will maintain all necessary insurance coverage, including general liability and workers compensation insurance (the Policies).

- a. **Proof of Coverage** – Company will provide County, contemporaneously with the execution of this Agreement, proof of such coverage in the Policies and will during the term of this Agreement continue to provide proof of such coverage in the form of current certificates of insurance. Upon written request from County, Company shall provide County, within ten (10) days of such written request, a complete copy of all insurance policies procured and maintained pursuant to this Agreement.
- b. **Duration of Coverage** – The Policies shall be effective, protect against, and respond to, liabilities asserted against Company irrespective of (i) when or where such claim or suit is asserted or filed, or (ii) whether this Agreement is terminated or otherwise expired.
- c. **Reporting-** The failure of Company to comply with any incident, suit, claim or other reporting provisions of the Policies, shall apply when a claim is asserted or suit filed.
- d. **Insurance Company-** All insurance coverage procured and maintained by Company pursuant to this Agreement shall be purchased from an insurance company whose rating and quality are acceptable by County. County shall have the right to require Company to change one or more insurance companies to comply with this requirement.
- e. **Cancellation, Revision-** With the exception of the State of Ohio statutory Workers' Compensation coverage, the Policies shall be endorsed to state that no insurance coverage under the Policies may or will be canceled, suspended, non-renewed, voided, reduced in coverage or limits of liability, or materially modified except after thirty (30) days prior written notice sent, via certified mail, return receipt requested, has been given to County.

K. Waiver. The remedies contained in this Agreement will be cumulative, and additional to any other remedies provided in law or equity. No waiver of a breach of any provision of this agreement will constitute a waiver of any other breach or of any provisions, and no course of conduct or any delay by County in exercising any rights under this Agreement will waive any rights of County to modify this Agreement. The County does not waive any legal rights or remedies and County shall have all legal rights and remedies as provided by state, federal and local laws including but not limited to the Ohio Uniform Commercial Code and Title 13 of the Ohio Revised Code. The County expressly does not agree with any limitations on liability or warranties.

L. Modification. This plan may be modified by the Committee if it obtains approval from the Department of Development and the legislative authority of the County. All changes to this RLF Plan must be consistent with relevant authorities listed above.

M. Non-Assignment. Company agrees to perform all duties and obligations imposed under the terms of this Agreement. Company agrees not to assign or delegate the

performance of its duties under this Agreement without written consent from the County. Any assignments, delegations or substitution attempted without the previous written consent of the County will effect, at the option of County, cancellation of all the County's obligations under this Agreement.

N. Jurisdiction. This Agreement is governed by the laws of the State of Ohio without regard to conflict of law principles. County does not waive any applicable statute of limitations. County does not agree to arbitration. All litigation must be litigated in the Akron Municipal Court, Summit County Court of Common Pleas, or the U.S. District Court, Northern District of Ohio Eastern Division, and Company permits itself to the jurisdiction and venue of those courts.

O. Entire Agreement. This Agreement and any documents incorporated by reference constitute the entire agreement of the parties.

P. Set Off. All claims for money due or to become due from County will be subject to deduction or set off by County by reason of any counter claim arising out of this or any other transaction by Company.

Q. Unresolved Findings of Recovery. Pursuant to Ohio Revised Code §9.24, Company represents and warrants that no unresolved findings of recovery have been issued against Company by the Auditor of the State of Ohio.

Intending to be legally bound, the parties have signed this Addendum effective as of the date signed by the Executive for the County of Summit.

COMPANY

By: Robert C. Filipiak

Date
Printed Name: Robert C. Filipiak

Title: Executive Director

July 18, 2012

Appendix: Intercreditor agreement

COUNTY OF SUMMIT

By: _____
Russell M. Pry, Executive

Approved as to form:

Deborah S. Matz
Director, Department of Law,
Insurance and Risk Management