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# PARTICIPANT LOAN PROGRAM

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## FOR The City and County of Denver Section 457 Deferred Compensation Trust

### GENERAL

This instrument constitutes the loan program authorized by section 5.14 of the Plan, and is intended to comply with Internal Revenue Code (“Code”) § 72(p)(2), § 457, and all applicable regulations issued thereunder. Loans shall be made available to all Participants on a reasonably equivalent basis without regard to an individual’s race, color, religion, sex, sexual orientation, age or national origin. This Loan Program shall be deemed a part of the Plan and shall be established and administered for the exclusive purpose of providing loans to Participants. The Loan Program allows one loan at a time. Loans may be granted for two different purposes, a non-housing loan and a housing loan.

### LOAN PROCEDURES POLICIES

#### I

#### DEFINITIONS

##### 1.1 Definitions.

- (a) Plan Definition Incorporated. Capitalized words and phrases herein shall have the same meaning as set forth in the Deferred Compensation Trust (“Plan”) to which this Loan Program relates.
- (b) Other Definitions. The following definitions shall also apply for purposes of the Loan Program.
  - i. Eligible Borrower shall mean a Participant who meets the eligibility requirements of Article III herein.
  - ii. Loan Program shall mean the loan program established under this instrument and authorized under Plan section 5.14.

## II

### DELEGATION OF AUTHORITY

- 2.1 General. The Denver Deferred Compensation Committee (the “Committee”) has explicit authority under section 5.14 of the Plan Document to establish this Loan Program.
- 2.2 Responsibilities. The Committee has exclusive authority and responsibility to establish the Loan Program, and, consistent with the provisions hereof, responsibility shall include, without limitation, the following:
- (a) To prescribe procedures to be followed by Eligible Borrowers as defined in section 3.1.
  - (b) To prescribe forms necessary to implement the Loan Program;
  - (c) To determine the terms on which loans will be approved or denied;
  - (d) To prescribe limitations on the types and amounts of loans offered;
  - (e) To prescribe a reasonable rate of interest;
  - (f) To prescribe the types of collateral which may secure a loan;
  - (g) To prescribe the steps that will be taken to preserve assets of the Plan in the event of default;
  - (h) To construe and interpret the Loan Program, and to decide all questions of eligibility and determine the amount, manner and time of payment of loans hereunder;
  - (i) To prepare and distribute, in such manner as the Committee determines appropriate, information explaining the Loan Program;
  - (j) To receive from the Employer, Third-Party Administrators and Eligible Borrower such information as necessary for the proper administration of the Loan Program;
  - (k) To furnish the Employer and the Third-Party Administrators, upon request, such annual reports with respect to the administration of the Loan Programs as are reasonable and appropriate;
  - (l) Information furnished to the Committee regarding employee loans shall be confidential.
  - (m) To ensure that eligible borrowers hold only one outstanding loan at a time.

- 2.3 Delegation. The Committee hereby delegates to the Third-Party Administrators exclusive authority and responsibility to administer the Loan Program in accordance with this Participant Loan Program.

### III

#### ELIGIBILITY FOR LOAN

- 3.1 Eligibility. A participant shall be an “**Eligible Borrower**” if he or she meets all of the following requirements at the time of the loan, an Eligible Borrower shall:
- (a) have an account balance of at least \$2,000 or more;
  - (b) not be currently in default on any previous loan under the Plan;
  - (c) not currently have a loan outstanding under the Plan;
  - (d) comply with all provisions of this Loan Program;
  - (e) meet the repayment qualifications established by the Committee;
  - (f) be a participant in the plan as defined by Denver Revised Municipal Code Sect. 18-437,
  - (g) be in good standing and have no suspensions by the Employer in the 12 months immediately preceding the date of the application, and;
  - (h) must have completed at least 12 months of service with the Employer.

### IV

#### LOAN PROCEDURES

- 4.1 Loan Limit. The maximum amount which can be borrowed by an Eligible Borrower with respect to a current loan shall be the lesser of:
- (a) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan during the one year period ending on the day before the date on which such loan was made; or
  - (b) 50 percent of the present value of the participant’s account balance under the Plan on the date of the loan.
  - (c) For the purpose of calculating the loan amount available to an eligible borrower as described in 4.1(a) and 4.1(b) above, Roth balances will be included. However, the actual loan dispersal may not be deducted from Roth balances. As such, if the pre-tax deferral

balance is less than the available loan amount, the loan will be limited to the available pre-tax balance.

- 4.2 Minimum Amount. No loan shall be made for less than \$1,000.
- 4.3 Maximum Number of Loans. An Eligible Borrower shall not have more than one loan under the Plan outstanding at any time. Participants, who were discovered to have more than one loan during the transition from multiple providers to one provider (TIAA-CREF) in January of 2014, shall be allowed to maintain the current loans only until those loans are paid off or otherwise terminated pursuant to the terms of this Participant Loan Program.
- 4.4 Plan Loan Application. Each Eligible Borrower desiring a loan must apply for a loan to the Third-Party Administrator who is administering the Eligible Borrower's account. The Third Party Administrator shall determine, based on the current value of the account, the amounts available for a loan. A one-time loan set-up and implementation fee may be assessed for a new loan and an annual loan administration fee may be assessed while there is an outstanding loan. No fee shall be charged by the third party administrator, to set up or administer an ACH payment service for an Eligible Borrower.
- 4.5 Source of Loan. The loan proceeds shall be obtained from the Eligible Borrower's Accounts. To fund an Eligible Borrower's loan, the loan balance shall be subtracted from the Eligible Borrower's selected investments on a pro rata basis. While the calculation for the available loan amount may include Roth balances as defined in Section 4.1(c), loan proceeds shall not come from Roth balances.
- 4.6 Refinancing, Renewals and Modifications. Once a loan has been issued it must be paid in full before a new loan is requested. Loans will not be refinanced.
- 4.7 Repayment Period. A loan shall be repaid within five years of the date such loan is made, except, if the loan proceeds are used to acquire a principal residence of the Eligible Borrower, the loan may be repaid over a period not to exceed 20 years.
- 4.8 Loan Repayment. The loan (both principal and interest) shall be repaid on a substantially level basis with payments based upon a bi-weekly payroll deduction schedule. Loan repayments shall be invested in accordance with the Eligible Borrower's current investment election. As of July 2013, all outstanding loans are being repaid on a semi-monthly basis. Beginning January 1, 2014, all new loans shall be issued on a bi-weekly basis to coincide with the City and County's payroll. Additionally, payments on all outstanding loans as of January 1, 2014 shall be re-amortized to match the City and County's bi-weekly payroll.
- 4.9 Loan Prepayment. Prepayment of a loan in full may be made at any time without penalty. Payment may be made by certified check or by ACH service, as administered by the Third-Party Administrator.
- 4.10 Rate of Interest. Loans shall be repaid with interest as established under this Loan Program. All loans shall be made at the interest rate as set by the Committee. The rate has been set by the Committee at Prime Rate + 1%. The rate of interest determined at commencement of the loan shall apply for the entire term of the loan. The Third-Party Administrators shall be

- responsible for providing the effective rate to the Committee during the regularly scheduled plan reviews.
- 4.11 Collateral. An Eligible Borrower shall secure his/her loan by the sale of holdings within his/her account equal to the loan amount. Evidence of the loan shall be documented in the form of a Promissory Note.
- 4.12 Treatment of Unpaid Loan Balances at Time of Distribution of an Eligible Borrower's Account Balance. If an Eligible Borrower has an unpaid loan balance at the time a distribution is to be made, the amount of the unpaid loan balance plus interest due to the date of distribution shall be subtracted from the total account balance before distribution.
- 4.13 Leave of Absence. An Eligible Borrower who takes an approved unpaid leave of absence, including an unpaid disability leave, or an approved paid leave of absence at a rate of pay (after income and employment tax withholding) that is less than the amount of the installment payments required under the terms of the loan, may either: (1) make payments by certified check, or; (2) suspend making loan payments for up to one year while on a leave of absence, or (3) by ACH service to facilitate timely payments directly from the Eligible Borrower's bank account. Upon return from a leave of absence, any Eligible Borrower who suspended payments must make additional payments via payroll deduction or ACH service, to ensure repayment within the original loan period (five or twenty years depending on the type of loan) by either re-amortizing the payments over the remaining term of the loan, or keeping the payments the same, but making a catch up payment(s) for the missed payments during the leave of absence. Suspension of loan repayments during leave due to qualified military services will be as permitted under Section 414(u) of the Code.

## V

### EVENTS OF DEFAULT

This Loan Program specifies what events will cause a loan to be in default, and the Loan Program specifies what steps a participant or beneficiary may take to avoid the loan being considered a deemed distribution.

- 5.1 Events of Default. Either of the following shall constitute an event of default by the Eligible Borrower:
- (a) Failure to pay any required installment; or
  - (b) Termination of employment with the Employer for any reason, followed by a failure to repay the loan within 60 days, unless the Eligible Borrower arranges for timely ACH payments to pay the required installment.

- 5.2 Cure Period. The cure period for each payment date is the period beginning with the day the payment was due and ending on the last day of the calendar quarter following the calendar quarter in which the payment was due. If payment is not made by the last day of the cure period, the entire unpaid loan balance (including accrued interest) shall be considered a deemed distribution and shall be treated as a taxable distribution from the Plan. Copies of Form 1099-R shall be issued to the Eligible Borrower and the Internal Revenue Service to report the unpaid balance as a taxable distribution.

## VI

### NOTICE

- 6.1 Notices. Any notice or other communication necessary to be given to an Eligible Borrower under this Loan Program shall be deemed sufficient if delivered in person or mailed to the Eligible Borrower's last known address by first class mail

The granting of any loan to an Eligible Borrower shall not be deemed to constitute a contract of employment between the employer and the participant. Nothing contained in the Plan, this Loan Policy, or in the terms of any loan granted hereunder shall be deemed to give the Eligible Borrower the right to be retained in the employ of the employer or to interfere with the right of the employer to discharge or to terminate the employment of the Eligible Borrower at any time without regard to the effect that such discharge or termination may have on the terms of the loan.

The Amended Participant Loan Program for the Deferred Compensation Trust of the City and County of Denver is hereby approved, effective July 25, 2017.

WITNESS WHEREOF, we have set our hands and seal on this 25<sup>th</sup> day of July, 2017.

ATTEST:

CITY AND COUNTY OF DENVER AS TRUSTEE FOR  
THE CITY AND COUNTY OF DENVER DEFERRED  
COMPENSATION TRUST

I hereby certify that this Loan Policy was adopted in a public meeting by a majority vote of the Deferred Compensation Committee of the City and County of Denver on July 18, 2017, at which time a quorum was present. The action has been memorialized in the written minutes.

By   
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Zlatko Letica, Secretary