

**Collateral Deposit Agreement
Between
Idaho Housing and Finance Association and
Lender**

THIS COLLATERAL DEPOSIT AGREEMENT (the "Deposit Agreement"), dated September ____, 2015, is between the Idaho Housing and Finance Association ("IHFA"), an independent public body corporate and politic, whose address is P.O. Box 7899, Boise, ID 83707 and [] Bank as Lender, (the "Lender") whose address is [], ID . IHFA and the Lender are, individually, a "Party" and, collectively, the "Parties".

RECITALS

A. IHFA controls and operates a revolving fund known as the Collateral Support Program (CSP), the purpose of which is to support Idaho small business loans needing additional collateral support. Such collateral support is provided in partnership with Idaho small business lending institutions.

B. The CSP was initially funded through a U.S. Department of Treasury grant (\$13 million) received in partnership by IHFA and the Idaho Department of Commerce in November 2011. The CSP fund was subsequently increased by \$6 million through contributions by IHFA, as of June 30, 2015.

C. IHFA, a public body corporate and politic, was identified as the program administrator under the federal grant and administers its own contributed resources under the CSP promulgated rules and regulations.

D. The Lender and IHFA have previously entered into a Lender Participation Agreement dated [] (the "Lender Participation Agreement") providing for Lender's participation in the CSP.

E. The Borrower (defined below) desires to obtain a loan from the Lender to [] (the "Project").

F. IHFA and the Lender desire to sign this Deposit Agreement to provide for the pledge by IHFA of cash collateral to the Lender under the CSP.

NOW, THEREFORE, in consideration of the recitals and mutual agreements in this Deposit Agreement, the Parties agree as follows:

Section 1. The Loan. Borrower, [], an Idaho (the "Borrower"), is receiving the following loan from the Lender, dated on or about the date of this Deposit Agreement. The Loan shall be disbursed in accordance with loan documents among the Borrower, any co-maker, guarantor, endorser, other debtor or obligor of the Loan, and the Lender, which include without limitation, a loan agreement, note, security agreement(s), and as applicable, other hypothecations, guarantees, and other ancillary and related documents (the foregoing, and this Deposit Agreement, including all Appendices, and any permitted amendments thereto, collectively, the "Loan Documents"):

Loan Principal Amount: []Dollars (\$0.00) (the "Loan", or the "Loan Limit").

The Loan is one of the following types of loans marked by an "X" below:

[] Term Loan. A term loan (fixed amount with specified repayment schedule (the "Term Loan")); or a

[] Line of Credit. A line of credit (open line of credit allowing for cycles of advances and repayment (the "Line of Credit")).

The original Loan Documents shall be retained by the Lender,

Section 2. Amount of Cash Collateral. On or about the closing of the Loan Documents, IHFA shall deposit the following principal amount of cash collateral with the Lender in account no. _____ in the name of IHFA maintained with the Lender (the "Collateral Deposit Account"):

IHFA Cash Collateral: [] Dollars (\$00) (the "Initial Deposit") (the Initial Deposit, and any reductions thereto as provided in this Deposit Agreement, collectively, the "Cash Collateral").

Funding of the Collateral Deposit Account.

The Collateral Deposit provided to the "Lender" will be funded in two phases; 50% of the approved collateral support will fund at the time of the "Loan" closing and the remaining 50% of approved collateral support will be deposited within 45 days of the time that IHFA is notified of a potential "risk of loss" against the Lender's loan.

"Risk of loss" must be at the time of Default by Borrower as outlined in Section 12 of this agreement.

Section 3. Grant of Security Interest in Cash Collateral. To secure the prompt payment in full when due of the obligations of the Borrower to the Lender under the Loan (as limited by this Section), IHFA grants to the Lender, a continuing security interest, whether now owned or later owned, acquired or arising in the following:

(a) the Collateral Deposit Account, and all certificates and instruments, if any, representing or evidencing the Cash Collateral, but in all cases, the security granted by IHFA in favor of the Lender is limited to the amount of the Cash Collateral, and

(b) all proceeds of the Collateral Deposit Account up to the amount of the Cash Collateral.

Notwithstanding anything to the contrary in this Deposit Agreement: (i) IHFA is not granting any security to the Lender in any of the interest or dividends or the like or other investment income accruing or otherwise arising from the Initial Deposit or Cash Collateral (the "Account Income"), (ii) all Account Income, and reduction to the Initial Deposit as provided by this Deposit Agreement remain the sole and separate property of IHFA, free and clear of any lien, claim, or interest of the lender or any third party, and (iii) the extent of the security provided by Cash Collateral is marked by an "X" below:

[] For a Term Loan, the Collateral Deposit Account secures the Term Loan only up to the principal amount disbursed under the Term Loan, but in no event shall the Cash Collateral be deemed to secure any amount in excess of the Loan Limit (the "Term Loan Principal Balance"), or

[] For a Line of Credit, the Cash Collateral secures the Line of Credit only up to an amount not to exceed the maximum Line of Credit up to the Loan Limit, and as further limited by any restrictions or reductions on further advances which reduce the Loan Limit as may be imposed by the Lender (the "Line of Credit Principal Balance").

Section 4. Perfection of Security Interest. IHFA authorizes the Lender to file financing statement(s) describing the Cash Collateral and Collateral Deposit Account in all public offices deemed necessary by the Lender, if any, and to take any action, including, without limitation, filing all financing statements, continuation financing statements and all other documents that the Lender may reasonably determine to be necessary to perfect and maintain the Lender's security interests in the Cash Collateral and the Collateral Deposit Account. The President and Executive Director ("President") of IHFA or such other officer of IHFA as may be designated by the President shall promptly execute and deliver to the Lender any documents that Lender reasonably deems necessary or desirable to perfect the security interests granted in this Deposit Agreement. This Deposit Agreement shall be considered a security agreement covering the Collateral Deposit Account and the Cash Collateral for purposes of the Uniform Commercial Code in Idaho.

Section 5. Permitted Investments. If requested by IHFA, the Lender will, from time to time, invest amounts on deposit in the Collateral Deposit Account, and any interest, dividends and proceeds from reinvestment, in such investments, other forms of deposit or savings accounts or certificates of deposit offered by the Lender, and as the President or such other officer of IHFA as may be designated by the President may select in writing and the Lender approves (the "Permitted Investments"). Nothing in this section shall be deemed to permit the Lender to invest any amounts on deposit in the Collateral Deposit Account, or any interest, dividends, and proceeds from reinvestment, in any other form of account without the express prior

written consent of the President of IHFA or another officer of IHFA designated by the President.

Section 6. Termination of Security Interest and Return of the Initial Deposit.

The security interest granted by this Deposit Agreement shall automatically terminate and the Cash Collateral shall be returned to IHFA, upon the first to occur of:

(a) payment of credit in full of an aggregate amount equal to the applicable of the: (x) outstanding Term Loan Principal Balance or (y) the then outstanding Line of Credit Principal Balance after taking into account the then existing restrictions or reductions on further advances which are imposed by the Lender, and subject to the closure of that part of the Line of Credit which equals the foregoing amount;

(b) an Event(s) of Default (as defined below) by the Lender;

(c) in the event of, and coincident with, the occurrence of the actions described in Section 12(b) (only the extent to which there is a balance remaining after application of the Cash Collateral as provided by Section 12(b)); or

(d) the expiration of the maturity date of the Loan as provided by the Loan Documents, as may be amended from time to time by the Lender: (i) with occurrence of an event described in Section 6(a) or (ii) without the Lender taking all action required of it under Section 12(b).

Upon such event, all funds and other investment property representing the Cash Collateral shall be the sole and separate property of IHFA, free and clear of any lien, claim or interest of the Lender or any third party, and shall, along with any Account Income or other funds in the Collateral Deposit Account, be disbursed by IHFA at its sole discretion. The Lender agrees to promptly execute and deliver to IHFA all documents that IHFA reasonably deems necessary or desirable to release the security interests granted in this Deposit Agreement, including, without limitation, termination statements.

Section 7. Administration of the Loan.

(a) Upon the request of IHFA as necessary to comply with the SSBCI requirements, the Lender shall provide IHFA with copies of all financial statements and tax returns provided by the Borrower to the Lender, and copies of all Loan Documents.

(b) The Lender shall disclose to the Borrower and any co-maker, guarantor, endorser, other debtor or obligor of the Loan, of the existence of this Deposit Agreement in connection with the making and servicing of the Loan and collecting payments to be made by the Borrower. The Lender shall exercise the same degree of care and discretion in servicing the Loan and collecting payments from the Borrower as it would take in servicing the Loan and collecting payments solely for its own account.

(c) The Lender may amend the terms and conditions of the Loan Documents without the consent of IHFA, provided however, the Lender may not, without the express prior written approval of the President of IHFA or another officer of IHFA designated by the President, by amendment or otherwise: (i) amend any of the Lender warranties and representations herein or any of the Borrower representations in the Borrower's Certificate and Agreement submitted with the Loan Documents, or (ii) waive or release any claim against any Borrower or any co-maker, guarantor, endorser, other debtor or obligor of the Loan; or (iii) consent to any release, substitution, or exchange of collateral, except (a) sales of inventory in the ordinary course of business or (b) collection of accounts receivable in the ordinary course of business, or (c) sales, substitution and exchange of worn or obsolete equipment in the ordinary course of business; or (iv) effectuate any of the circumstances in Section 6(c)(i), Section 6(c)(ii), or Section 6(c)(iii).

Section 8. Fees. A fee of [] Dollars (\$0.00) will be paid to IHFA for the collateral support provided to this Loan.

Section 9. IHFA Access to Cash Collateral. Upon written notice from IHFA, the Lender shall release to IHFA or at its order (the "Release") amounts equal to the:

(a) All Account Income at the times payable by the Lender for accounts of the same type, and

(b) the applicable of:

1. in the case of a Term Loan, the reduction in the principal owing under the Loan as payments or other credits are applied against the Term Loan Principal Balance, IHFA may request partial return of the collateral deposit to correspond to ongoing principal reductions in the loan in order to maintain the original ratio of collateral deposit to loan principal.; or

2. in the case of a Line of Credit, the amounts in the Collateral Deposit Account in excess of the lesser of:

i. the Initial Deposit; or

ii. IHFA may request partial return of the collateral deposit pro rata based on reductions in the sum of the outstanding principal amount of the Line of Credit plus the undrawn amount of the Lender's line of credit to make the Line of Credit, up to the Loan Limit, and as further limited by any restrictions or reductions on further advances which reduce the Loan Limit as may be imposed by the Lender.

Nothing in this Section shall be deemed to imply or impose upon IHFA any obligation to increase the amount of the Cash Collateral. The Lender shall provide all detail reasonably requested by IHFA regarding the breakdown of individual payments, credits, fees, or other charges against the Loan, including without limitation, itemization of the foregoing items.

Section 10. Representations and Warranties of IHFA. IHFA represents and warrants that:

(a) IHFA is an independent public body corporate and politic of the State of Idaho and has the power and authority to enter into and perform its obligations under this Deposit Agreement;

(b) except as disclosed in writing to the Lender or provided by law, no consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Deposit Agreement by IHFA or the performance of any of its obligations under this Deposit Agreement;

(c) IHFA is the legal and beneficial owner of the Cash Collateral free and clear of any lien, security interest, option or other charge or encumbrance except for the security interest created by this Deposit Agreement; and

(d) the pledge of the Cash Collateral under this Deposit Agreement creates a valid first priority security interest in the Cash Collateral, securing the payment of the Term Loan Principal Balance or Line of Credit Principal Balance, whichever is applicable.

Section 11. Representations and Warranties of the Lender. The Lender represents and warrants that all of the warranties and representations and the terms and conditions set forth in the Lender Participation Agreement continue in full force and effect and apply to the Loan and the Lender's participation in the CSP as well as the making of the Loan, and Lender further represents and warrants that:

(a) The only recipient of the Loan is the Borrower identified and described in this Deposit Agreement;

(b) Lender shall perform all of its obligations and duties, and shall otherwise comply with all term and conditions, under the Loan Documents and this Deposit Agreement, including all obligations and duties set forth in the Lender Participation Agreement.

Section 12. Default by the Borrower. Upon the occurrence of an event of default (or similar term or phrase under the Loan Documents) by the Borrower under the Loan Documents (which is not cured after the expiration of any applicable opportunity to cure):

(a) in addition to all notices to the Borrower required under the Loan Documents, the Lender shall copy IHFA with all notices to the Borrower, and further provide IHFA written notice describing in reasonable detail the circumstances of the event of default; and

(b) prior to drawing Cash Collateral from the Collateral Deposit Account to repay the Loan, the Lender shall first take control (via foreclosure, deed-in-lieu of foreclosure, possession or other similar action, including exercising the Lender's rights as to any applicable assignment of rents) of any and all Additional Collateral and the Lender shall sell or liquidate the Additional Collateral and apply the proceeds thereof to the Loan. (The gross proceeds from the sale or liquidation of the Additional Collateral (exclusive of any costs and expenses related to such sale or liquidation, or interest, or fees or other charges of any kind) is referred to herein as the "Gross Proceeds from Additional Collateral"; and the difference between the Gross Proceeds from Additional Collateral and the amount due under the Loan shall be deemed the "Remaining Default Principal Balance").

(i) To the extent the Gross Proceeds from Additional Collateral is equal to or greater than the underwritten value assigned by the Lender for the Additional Collateral at the time of the Lender's initial advance of the Loan (the "Underwriting Value for Lending Purposes") then, upon at least forty-five (45) calendar days prior written notice to IHFA, and in accordance with all applicable laws, the Lender may charge, set-off and otherwise apply up to 100% of the then existing balance of the Cash Collateral against the Remaining Default Principal Balance.

(ii) To the extent the Gross Proceeds from Additional Collateral is less than the Underwriting Value for Lending Purposes then, upon at least forty-five (45) calendar days prior written notice to IHFA, and in accordance with all applicable laws, the Lender may charge, set-off and otherwise apply up to 100% of the then existing balance of the Cash Collateral against the Remaining Default Principal Balance.

(iii) In the event that funds remain in the Collateral Deposit Account after Lender takes the actions above, such funds shall be immediately remitted to IHFA.

Section 13. [Reserved]

Section 14. **Default by the Lender.** The occurrence of any one or more of the following events or conditions shall constitute an Event(s) of Default by the Lender under this Deposit Agreement, unless a written waiver of the default is signed by the President of IHFA or another officer of IHFA designated by the President:

(a) any representation or warranty made by the Lender under this Deposit Agreement or any of the Loan Documents is incorrect in any material respect;

(b) any material breach by the Lender of any duty or obligation of the Lender under this Deposit Agreement which is not cured by the Lender to the satisfaction of IHFA within forty-five (45) calendar days after written notice thereof by IHFA to the Lender;

(c) the appointment of a receiver or custodian over a material portion of the Lender's assets, which receiver or custodian is not discharged within sixty (60) calendar days of such appointment; or

(d) any voluntary bankruptcy or insolvency proceedings are commenced by the Lender; or any involuntary bankruptcy or insolvency proceedings are commenced against the Lender, which proceedings are not set aside within sixty (60) calendar days from the date of institution thereof.

Upon the occurrence of anyone or more of an Event(s) of Default by the Lender under this Deposit Agreement, in addition to all rights and remedies created by this Deposit Agreement, IHFA shall be entitled to pursue and enforce all rights and remedies available to IHFA, legal and equitable, including without limitation, the right of recoupment, and the right to require the Lender's books and records related to the Loan, Loan Documents and this Deposit Agreement to be separately audited by an independent certified public accountant selected by IHFA, at IHFA's sole cost and expense. Provided however, in the event the audit reveals a breach of this Deposit Agreement or the Loan Documents has occurred, the Lender shall reimburse IHFA for the fees and

expenses incurred to perform the audit.

No remedy is intended to be the sole and exclusive remedy in case any Event(s) of Default by the Lender under this Deposit Agreement shall occur and each remedy shall be cumulative and in addition to every other provision or remedy now or later existing at law, in equity, by statute or otherwise. All remedies shall be cumulative. The Lender shall pay all costs and expenses, including, without limitation, reasonable attorneys fees and expenses incurred by IHFA in enforcing any obligation of the Lender arising from or under the Loan, any of the Loan Documents, or this Deposit Agreement.

Section 15. **Notices.** Any notice or other communication under this Deposit Agreement shall be in writing and e-mailed, or faxed, or mailed by first class mail, postage prepaid, or sent by express, overnight courier to the respective Party at the address listed at the beginning of this Agreement or such other last known addresses or e-mail accounts, and shall be deemed delivered one business day after the delivery or mailing date.

Section 16. **Counterparts: Facsimile/Pdf Signatures.** This Deposit Agreement may be signed in counterparts and delivered by facsimile or by pdf, and in any such circumstances, shall be considered one document and an original for all purposes.

Section 17. **Severability.** All of the clauses of this Deposit Agreement are distinct and severable and, if any clause shall be deemed illegal, void or unenforceable, it shall not affect the validity, legality or enforceability of any other clause or provision of this Deposit Agreement.

Section 18. **Captions.** The captions or headings in this Deposit Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Deposit Agreement.

Section 19. **Governing Law.** This Deposit Agreement is a contract made under the laws of the State of Idaho, and for all purposes shall be governed by, and construed in accordance with, the laws of the State of Idaho.

Section 20. **Relationship between Parties.** The Lender, and its officers, directors, agents and employees shall not describe or represent themselves as agents of the State of Idaho, IHFA, to any person, firm or entity for any purpose.

Section 21. **Successors and Assigns.** Except as otherwise provided by law, any rule of law or regulation (including without limitation, any Executive Order of the State of Idaho), IHFA may not pledge, sub-participate, assign, or otherwise transfer its rights, duties or obligations in this Deposit Agreement and the Loan Documents without the express prior written approval of the Lender, which shall not be unreasonably withheld. The Lender may not pledge, sub-participate, assign or otherwise transfer its ownership interest in the Loan, or its rights, duties or obligations under this Deposit Agreement or the Loan Documents, without the express prior written approval of the President of IHFA or another officer of IHFA designated by the President, which shall not be unreasonably withheld. This Deposit Agreement shall bind the permitted successors and permitted assigns of the Parties.

Section 22. **Waiver.** A failure or delay in exercising any right under this Deposit Agreement will not be presumed to operate as a waiver unless otherwise stated in this Deposit Agreement, and a single or partial exercise of any right will not be presumed to preclude any subsequent or further exercise of that right or the exercise of any other right.

Section 23. **Amendment.** This Deposit Agreement, and except as otherwise permitted in Section 7(c) of this Deposit Agreement, the Loan Documents, may not be modified or amended without the express prior written approval of the President of IHFA or another officer of IHFA designated by the President, and no permitted modification or permitted amendment shall be binding except pursuant to a written instrument signed by the Parties sought to be bound.

LENDER

Authorized Signer –

Title _____

Date: _____

**IDAHO HOUSING AND FINANCE
ASSOCIATION**

Cory C. Phelps, Economic Development
Finance Manager

Date: _____

(SIGNATURE PAGE TO COLLATERAL DEPOSIT AGREEMENT)