

CASH COLLATERAL PROGRAM

Agreement No. _____

MASTER AGREEMENT Between

ILLINOIS DEPARTMENT OF COMMERCE
AND ECONOMIC OPPORTUNITY
and

(PARTICIPATING LENDER NAME)

(PARTICIPATING LENDER ADDRESS)

(PARTICIPATING LENDER CITY/STATE/ZIP + 4)

ATTN: _____
(PARTICIPATING LENDER CONTACT / TITLE)

PHONE/FAX: _____
(PARTICIPATING LENDER)

FEIN: _____
(PARTICIPATING LENDER)

The Participating Lender does business as a (please check one):

_____ Individual (01)	_____ Governmental (08)
_____ Sole Proprietor (02)	_____ Nonresident Alien (13)
_____ Partnership/Legal Corporation (03)	_____ Estate or Trust (10)
_____ Tax Exempt (16)	_____ Pharmacy (Non-Corp.) (11)
_____ Corporation providing or billing medical and/or health care services	_____ Pharmacy/Funeral Home/ Cemetery (Corp.) (15)
_____ Corporation NOT providing or billing medical and/or health care services	_____ Limited Liability Company

(select applicable tax classification)
_____ D-Disregarded Entity
_____ C-Corporation
_____ P-Partnership

CASH COLLATERAL DEPOSIT AGREEMENT
between
ILLINOIS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY
and
_____ **(LENDING INSTITUTION)**

This **CASH COLLATERAL DEPOSIT AGREEMENT** ("Deposit Agreement"), is effective as of _____, 201__, through the ending date of March 31, 2017 (if not earlier terminated), and is between the Illinois Department of Commerce and Economic Opportunity, (the "Department" or "DCEO"), a department of the State of Illinois, having its principal office at 500 East Monroe Street, Springfield, Illinois 62701-1615 and _____, (the "Lending Institution" or "Lender"), whose address is _____. As used in this Deposit Agreement, the Department and the Lending Institution are, individually, a "Party" and, collectively, the "Parties."

RECITALS

Whereas, the Department has created the SSBCI Collateral Support Program under the authority granted to it by the federal State Small Business Credit Initiative ("SSBCI") of the Small Business Jobs Act of 2010 (Title III of Public Law 111-240); the Allocation Agreement dated July 26, 2011 between the United States Department of the Treasury ("US Treasury") and the State of Illinois; Article 5, Section 45 of Public Act 97-57 of the Illinois General Assembly; and the Department of Commerce and Economic Opportunity Law (30 ILCS 605/605-1 *et seq.*); and

Whereas, the Department of Commerce and Economic Opportunity Law (30 ILCS 605/605-55) authorizes the Department to enter into any contracts that it deems "necessary, proper, and expedient in accomplishing its duties"; and

Whereas, the purpose of the SSBCI Collateral Support Program (the "Program") is to foster economic development in Illinois by enhancing the availability of credit to small and medium-sized businesses from private sources of capital; and

Whereas, in pursuit of these goals the Department is willing, from time to time, to deposit funds with Lending Institutions to provide for a pledge by DCEO of Cash Collateral (as hereinafter defined) in favor of such Lending Institutions in support of the Lending Institutions' loans to Program-eligible Borrowers (as defined below); and

Whereas, the Borrower (as defined below) desires to obtain a term loan from the Lending Institution to _____, (the "Project"); and

Whereas, in connection to this specific loan, the Department and the Lending Institution desire to sign this Deposit Agreement to provide for the pledge by DCEO of the Cash Collateral in favor

of the Lending Institution pursuant to the Program, and to further delineate the rights, duties and liabilities of the Parties in respect of the Cash Collateral.

Now therefore, in consideration of the recitals and mutual agreements contained herein, the Parties hereby agree as follows:

Section 1. The Loan. _____, (the "Borrower", a _____ corporation/limited liability company, sole proprietorship), is receiving a term loan in the principal amount of _____ Dollars (\$_____) (the "Loan") dated on or about the date of this Deposit Agreement, from the Lending Institution. As used in this Deposit Agreement, "Loan Limit" shall mean _____ Dollars (\$_____). The Loan has been, or will be, disbursed by the Lending Institution to the Borrower as a single disbursement in accordance with the loan documents between the Borrower and the Lending Institution. The Loan is or shall be evidenced by a loan agreement, note and other documentation, secured by such security agreements, real estate mortgages, or hypothecations; and if guaranteed, guaranteed by such agreements evidencing the guarantees (collectively, "Loan Documents"). The Loan Documents shall be dated on or about the date of this Deposit Agreement. The original Loan Documents shall be retained by the Lending Institution, and true and correct copies of all Loan Documents shall be forwarded to DCEO upon execution.

Section 2. Cash Collateral Account. The Lender shall establish in the name of DCEO that certain account no. _____ maintained at the Lender (the "Cash Collateral Account"). The Cash Collateral Account will be owned at all times by DCEO. Within thirty (30) business days after the Loan Documents are received by DCEO, DCEO shall deposit in the Cash Collateral Account the amount of _____ Dollars (\$_____) ("Initial Deposit", the Initial Deposit, and any additions and reductions as provided in this Deposit Agreement, collectively, the "Cash Collateral"). Upon receipt of the Cash Collateral, the Lender shall provide DCEO with a Confirmation of Receipt of Cash Collateral in the form attached hereto as Exhibit A.

Obligations of the Department will cease immediately without penalty or further payment being required if (i) the SSBCI funds for the Program are no longer available (whether they have all been otherwise utilized or the Department no longer has access to them) or (ii) in any fiscal year the Illinois General Assembly fails to appropriate or otherwise make available sufficient funds for this Agreement. DCEO and the Lender acknowledge that the Program will be funded, in whole or in part, by State Small Business Credit Initiative Program funds, as available, and as such, both DCEO and the Lender agree that the use of funds pursuant to this Agreement shall be governed by, and not be in derogation of, any rules, regulations, or guidelines for the Program promulgated or issued by the US Treasury or the State of Illinois.

Section 3. Grant of Security Interest in Cash Collateral Account. To secure the prompt payment in full when due of the Borrower's obligations under the Loan Documents to the Lending Institution (as limited by this Section), now or later existing, the Department hereby grants to the Lending Institution a continuing security interest in the Cash Collateral Account; any and all funds held in the account, including interest and dividends; all certificates and instruments, if any, from time to time, representing or evidencing the account or any of the

foregoing arising from or representing Permitted Investments; and all proceeds of the Cash Collateral Account.

Notwithstanding anything to the contrary set forth in this Deposit Agreement, the extent of the security provided by the Cash Collateral Account is limited to only term loans, (structured as a fixed amount with a fixed repayment schedule) with a maximum tenor under the Collateral Support Program of five (5) years. The Cash Collateral Account secures only up to _____ percent, (____%) of the principal amount disbursed under the Loan, but in no event shall the Cash Collateral Account be deemed to secure any amount in excess of _____ Dollars (\$_____) (“Loan Limit”).

Section 4. Perfection of Security Interest. The Department authorizes the Lending Institution, at its own cost, to file financing statement(s) describing the Cash Collateral Account in all public offices reasonably deemed necessary by the Lending Institution and to take any action, including, without limitation, filing all financing statements, continuation financing statements and all other documents that the Lending Institution may reasonably determine to be necessary to perfect and maintain the Lending Institution’s security interests in the Cash Collateral Account. The DCEO Deputy Director of the Office of Business Development (“DCEO Deputy Director”) shall promptly execute and deliver to the Lending Institution any documents that the Lending Institution reasonably deems necessary or desirable to perfect the security interests granted in this Deposit Agreement.

Section 5. Permitted Investments. If requested by DCEO, the Lending Institution will, from time to time, invest amounts on deposit in the Cash Collateral Account, as well as any interest, dividends and proceeds of such deposits, in such investments or other forms of deposit (e.g. savings accounts or certificates of deposit) offered by the Lending Institution, as the DCEO Deputy Director may select in writing and the Lending Institution approves (“Permitted Investments”). Nothing in this section shall be deemed to permit the Lending Institution to invest any amounts on deposit in the Cash Collateral Account, or any interest, dividends or proceeds thereof, in any other form of account without the express prior written consent of the DCEO Deputy Director.

Section 6. DCEO Access to Cash Collateral. So long as no event of default (or similar term or phrase) by Borrower under the Loan Documents shall have occurred and be continuing, upon written notice from DCEO the Lending Institution shall pay or release to DCEO on each anniversary of the Initial Deposit (i) any interest, dividends and the like derived on the Cash Collateral and (ii) a percentage of the Cash Collateral that is equal to the percentage of the reduction in the principal amount owing under the Loan for such period, so that the same percentage of the principal amount of the Loan is maintained in the Cash Collateral Account. Nothing in this Section shall be deemed to imply or impose upon the Department any obligation to increase the amounts on deposit in the Cash Collateral Account. The Lending Institution shall provide all detail reasonably requested by DCEO regarding the breakdown of individual payments, credits, fees, or other charges against the Loan, including without limitation, itemization of the foregoing items.

Section 7. Termination of Security Interest and Return of the Initial Deposit. The security interest granted by this Deposit Agreement shall automatically terminate and the Initial Deposit shall be returned to DCEO, upon the first to occur of:

- (a) payment or credit in full of an aggregate amount equal to the outstanding Loan Limit;
- (b) an Event of Default under this Deposit Agreement by the Lending Institution;
- (c) an event described in Section 9(b) (only the extent to which there is a balance in the Cash Collateral Account remaining after application of the Cash Collateral as provided by Section 9(c)); or
- (d) the maturity date of the Loan as provided by the Loan Documents is amended.

Upon any such event, all funds and other investment property remaining in the Cash Collateral Account shall be the sole and separate property of DCEO, to be disbursed by DCEO at its sole discretion, and free and clear of any lien, claim or interest of the Lending Institution or any third party. The Lending Institution agrees to promptly execute and deliver to DCEO all documents that DCEO reasonably deems necessary or desirable to release the security interests granted in this Deposit Agreement, including, without limitation, termination statements (collectively, "Release Documents") and to pay any recording or filing fees associated with the Release Documents.

Section 8. Administration of the Loan.

(a) The Lending Institution shall provide the Department with copies of all financial statements provided by the Borrower to the Lending Institution, and all Loan Documents executed by the Borrower, any co-maker, guarantor, endorser or other obligor of the Loan. Additionally, upon the request of DCEO, and unless the DCEO Deputy Director specifically exempts one or more specific documents, the Lending Institution shall provide DCEO with any additional documents in its possession or control arising out of, or related to, the Loan Documents.

(b) The Lending Institution shall disclose to the Borrower 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 Lending Institution 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 Lending Institution may not, without the express prior written approval of the DCEO Deputy Director:

- i. waive or release any claim against any Borrower or any co-maker, guarantor, endorser or other obligor of the Loan;
- ii. consent to any release, substitution, or exchange of collateral; or
- iii. amend any material term or condition of a Loan Documents or any document otherwise securing the Loan which effectuates any of the circumstances in Section 8(c)(i) or 8(c)(ii).

Section 9. 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) the Lending Institution shall copy DCEO on all notices to the Borrower required under the Loan Documents, and further provide DCEO written notice describing in reasonable detail the circumstances of the event of default;

(b) prior to drawing on the Cash Collateral Account to repay the Loan, the Lending Institution shall first take control (via foreclosure, deed-in-lieu of foreclosure, possession or other similar action, including exercising the Lending Institution's rights as to any applicable assignment of rents) of any and all Additional Collateral and the Lending Institution shall exert its best efforts to sell or liquidate the Additional Collateral and apply the proceeds thereof to the Loan prior to drawing any amount from the Cash Collateral Account to repay 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"); and

(c) to the extent the Gross Proceeds from Additional Collateral is less than the Remaining Default Principal Balance, then, upon at least forty-five (45) days prior written notice to DCEO, and in accordance with all applicable laws, the Lending Institution 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.

Section 10. Default by the Lending Institution. The occurrence of any one or more of the following events or conditions shall constitute an Event(s) of Default by the Lending Institution under this Deposit Agreement, unless a written waiver of the default is signed by the DCEO Deputy Director:

(a) any representation or warranty made by the Lending Institution is incorrect in any material respect;

(b) any material breach by the Lending Institution of any duty or obligation of the Lending Institution under this Deposit Agreement which breach is not cured by the Lending Institution to the satisfaction of DCEO within thirty (30) calendar days after written notice of the breach by DCEO to the Lending Institution;

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

(d) any voluntary bankruptcy or insolvency proceedings are commenced by the Lending Institution; or

(e) any involuntary bankruptcy or insolvency proceedings are commenced against the Lending Institution, which proceedings are not set aside within sixty (60) calendar days from the date of institution thereof.

Upon the occurrence of any one or more of an Event(s) of Default by the Lending Institution under this Deposit Agreement, in addition to all rights and remedies created by this Deposit Agreement, DCEO shall be entitled to pursue and enforce all rights and remedies available to DCEO, legal and equitable, including but not limited to, the right to require the Lending Institution'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 DCEO, at DCEO's sole cost and expense. Provided however, in the event the audit reveals that a breach of this Deposit Agreement has occurred, the Lending Institution shall reimburse DCEO for the fees and expenses incurred to perform the audit. All such remedies shall be cumulative.

No remedy is intended to be the sole and exclusive remedy in case any Event(s) of Default by the Lending Institution 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. The Lending Institution shall pay all costs and expenses, including, without limitation, reasonable attorneys fees and expenses incurred by DCEO in enforcing any obligation of the Lending Institution arising from or under the Loan, any of the Loan Documents, or this Deposit Agreement.

Section 11. Other Loans by Lending Institution. DCEO acknowledges that the Lending Institution may have other existing loans with the Borrower and may, in the future, make additional loans to the Borrower. The Lending Institution has no obligation to attempt to collect Loan payments in preference over the collection or enforcement of any other loan with the Borrower. The Lending Institution shall, however, first take control (via foreclosure, deed-in-lieu of foreclosure, possession or other similar action) of any and all collateral securing the Loan (all such collateral, other than the Cash Collateral Account, is referred to as the "Additional Collateral") and the Lending Institution shall sell or liquidate the Additional Collateral and apply the gross proceeds thereof to the Loan prior to drawing any amount from the Cash Collateral Account to repay the Loan. If, and only to the extent that, the proceeds from the sale or liquidation of all of the Additional Collateral are not sufficient to repay in full the amount due under the Loan, then the Lending Institution may draw amounts from the Cash Collateral Account to repay the Loan up to the amount of any such shortfall in accordance with the procedures set forth in Section 9(b) above.

Section 12. Indemnification and Hold Harmless. DCEO, the State of Illinois ("State"), the chief compliance officer, and their respective directors, participants, officers, agents and employees (collectively, the "Indemnified Persons") shall not be liable to the Lending Institution for any reason.

The Lending Institution shall indemnify and hold DCEO, the State, and other Indemnified Persons harmless against all claims asserted by or on behalf of any individual person, firm or entity, arising or resulting from, or in any way connected with the Loan Documents, this Deposit

Agreement or any act or failure to act by the Lending Institution, including all liabilities, costs and expenses, including reasonable counsel fees, incurred in any action or proceeding brought by reason of any such claim. The Lending Institution shall also indemnify DCEO, the State of Illinois, and other Indemnified Persons from and against all costs and expenses, including reasonable counsel fees, lawfully incurred in enforcing any obligation of the Lending Institution arising from or under the Loan Documents or this Deposit Agreement.

The Lending Institution shall have no obligation to indemnify an Indemnified Person under this Section if a court with competent jurisdiction finds that the liability in question was solely caused by the willful misconduct or gross negligence of DCEO or such Indemnified Person, unless the court finds that despite the adjudication of liability, DCEO or such Indemnified Person is fairly and reasonably entitled to indemnity for the expenses the court considers proper. DCEO and the Lending Institution agree to act cooperatively in the defense of any action brought against DCEO or any other Indemnified Person to the greatest extent possible.

Performance of the Lending Institution's activities contemplated under this Deposit Agreement is within the sole control of the Lending Institution and its employees, agents and contractors, and an Indemnified Person shall have no liability in tort or otherwise for any loss or damage caused by or related to the actions or failures to act, products and processes of the Lending Institution, its employees, agents or contractors. This Section shall survive the payment in full of the Loan, or any termination of this Deposit Agreement.

Section 13. Representations and Warranties of the Department: DCEO represents and warrants that:

(a) DCEO is a department of the State of Illinois within the state's Executive Branch. The Department has the power and authority to enter into and perform its obligations under this Deposit Agreement;

(b) except as disclosed in writing to the Lending Institution 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 DCEO or the performance of any of its obligations under this Deposit Agreement;

(c) DCEO 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.

Section 14. Representations and Warranties of the Lending Institution. The Lending Institution represents and warrants that:

(a) The Lending Institution has the power and authority to enter into and perform its obligations under the Loan Documents and this Deposit Agreement and shall perform all of its obligations and duties under the Loan Documents and this Deposit Agreement;

(b) The Lending Institution is in material compliance with all federal and state laws, rules, and regulations pertaining to the making of loans; notwithstanding the foregoing, if the Lending Institution is under a Memorandum of Understanding or other regulatory action, it has submitted to the DCEO a certification from its general counsel affirming that the Lending Institution has addressed the issues raised by the government and is in substantial compliance with the regulator's guidance;

(c) None of the material terms and conditions of the Loan or Loan Documents shall be amended without the express prior written approval of the DCEO Deputy Director;

(d) To the best of its knowledge, the Lending Institution or any of its affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in the Lending Institution of 20% or more: (i) does not have any criminal convictions incident to the application for or performance of a state contract or subcontract; (ii) does not have any criminal convictions or have not been held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes; and (iii) no Principal of the Lender has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911));

(e) The Loan was not made in order to place under the Program prior indebtedness that is not covered by the Program;

(f) The Project would not be undertaken unless the Cash Collateral is provided. The full amount of the Loan would not be made unless the Cash Collateral Account is established, or unless the Cash Collateral is being provided as an incentive to attract or retain a business in Illinois, or that the Loan is being made to a business located in or relocating to a Low to Moderate Income Area;

(g) The Loan will not be used to: (i) induce the Borrower, any qualified business or a small business to leave the State of Illinois; or (ii) to contribute to the violation of internationally recognized workers rights, as defined in section 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a country other than the United States, including any designated zone or area in that country;

(h) the Lending Institution has performed a credit analysis of the Borrower satisfactory to the Lending Institution;

(i) upon closing of the Loan, the Lending Institution shall have good and marketable title to the Loan subject to no encumbrance or disability, and except as created by this Deposit

Agreement and the Loan Documents, no party to the Loan shall have any defense or claim against the Lending Institution arising out of the Loan;

(j) the Loan shall be in accordance with applicable Federal and State laws, including but not limited to, laws governing type of loans, interest rates and priority of security;

(k) DCEO may rely on the Lending Institution to perform the requirements of Section 326 of the Patriot Act of 2001, as amended, also known as the Customer Identification Program (CIP) provided:

i. the Lending Institution is subject to examination by the FDIC under applicable law and regulation;

ii. the Lending Institution is required to certify annually to DCEO that it has implemented its anti-money laundering program and that it or its agents will perform the specified requirements delegated to it by DCEO; and

iii. DCEO must have the right, and shall so inform the Lending Institution that it will not purchase, or shall require Lending Institution to repurchase, any loan or contract entered by a customer whose identity is unable to be verified or whose name appears on any list designated by Federal Treasury of terrorists or terrorist organizations;

(l) the Borrower, as well as any co-maker, guarantor, endorser, other debtor or obligor of the Loan, has consented, or will prior to the closing of the Loan consent, to the Cash Collateral, and the terms and conditions of this Deposit Agreement;

(m) the proceeds of the Loan will not be applied to any prior loan, line of credit, or other borrowing from the same Lending Institution or its affiliates made to any Borrower, co-maker, guarantor, endorser, other debtor or obligor of the Loan;

(n) to the extent required under law, the security documents for the Loan were (and/or will be) properly recorded in order to validly perfect and maintain a security interest in the collateral securing the Loan, and the Lending Institution will take whatever additional actions may be necessary to validly perfect and maintain a security interest in all collateral securing the Loan;

(o) the Loan Documents provide (or will provide upon closing of the Loan) that, for so long as any of the Loan is outstanding, the Borrower shall maintain substantially all of its employees for the Project (exclusive of sales staff) or operations for the Project within the State of Illinois; and

(p) to enable the Auditor General of the State of Illinois ("Auditor General"), DCEO, and the US Treasury Inspector General to ensure compliance with the terms of this Deposit Agreement and the Act:

i. the Lending Institution shall permit the Auditor General, DCEO, the US Treasury Inspector General, and any member, employee or agent of the foregoing to visit the Lending Institution and any other location where the books and records of the Lending Institution are normally kept to inspect the books and records, including financial records and all other information and data, relevant to the terms of this Deposit Agreement;

- ii. the Lending Institution shall cooperate with the Auditor General, DCEO, and the US Treasury Inspector General, and any member, employee or agent of the foregoing; and
- iii. the Lending Institution shall permit the Auditor General, DCEO, and the US Treasury Inspector General, and any member, employee or agent of the foregoing to make copies or extracts from information and to discuss the affairs, finances and accounts of the Lending Institution and Borrower related to the Loan Documents and this Deposit Agreement.

Section 15. Additional Obligations of Lending Institution. The Lending Institution shall:

- (a) promptly notify DCEO in writing (and describe in reasonable detail) of any breach of any representation or warranty of the Lending Institution in this Deposit Agreement, any breach of any representation or warranty of the Borrower in any of the Loan Documents, or any time the Loan is delinquent 60 days or more;
- (b) provide prior written notice to DCEO of any of the following actions by or on behalf of the Lending Institution:
 - (i) any acceleration of any payment under the Loan or any note evidencing the Loan;
 - (ii) the commencement of any collection proceeding with respect to the Loan against any Borrower or any co-maker, guarantor, endorser, debtor or other obligor of the Loan; or
 - (iii) the seizure, sale, transfer, assignment, foreclosure, or attempt to exercise against any collateral securing the Loan; and
- (c) provide written notice to DCEO if the Borrower has advised it will pre-pay or re-finance the Loan.

Section 16. Notices. Any notice, approval, request, authorization, direction or other communication under this Deposit Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes:

- (i) on the delivery date if delivered by confirmed facsimile;
- (ii) on the delivery date if delivered personally to the Party to whom it is directed;
- (iii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt; or
- (iv) three business days after the mailing date, whether actually received, if sent by United States mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. The notice address for the Parties shall be the address as set forth in the introductory paragraph of this Deposit Agreement, with the other relevant notice information, including the recipient for notice and, as applicable, such recipient's fax number or e-mail address, to be as reasonably identified by the notifying Party. DCEO and Lending Institution may by notice given to

other Party designate any further or different addresses to which subsequent notices shall be sent.

Section 17. Counterparts and Copies. This Deposit Agreement may be executed in any number of counterparts, each of which, when executed shall be deemed an original, and all of which together, shall constitute one and the same agreement. Copies (whether photostatic, facsimile or otherwise) of this Deposit Agreement may be made and relied upon to the same extent as though such copy was an original.

Section 18. Severability. If any clause, provision or section of this Deposit Agreement shall be held illegal or invalid by any court, to the extent permitted by the court order, decree or judgment the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections of this Deposit Agreement and this Deposit Agreement shall be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in this Deposit Agreement.

Section 19. 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 20. Governing Law. This Deposit Agreement and the Loan Documents are a contract made under the laws of the State of Illinois, and for all purposes shall be governed by, and construed in accordance with, the laws of the State of Illinois.

Section 21. Relationship between Parties. The Lending Institution, and its officers, directors, agents and employees shall not describe or represent themselves as agents of the State or the Department to any person, firm or entity for any purpose.

Section 22. 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 Illinois), DCEO 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 Lending Institution. The Lending Institution may not pledge, sub-participate, assign or otherwise transfer its ownership interest in the Loan, and/or its rights, duties or obligations under this Deposit Agreement or the Loan Documents, without the express prior written approval of the DCEO Deputy Director. The terms and conditions of this Deposit Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

Section 23. 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 24. Amendment. Except as otherwise provided in this Deposit Agreement, neither this Deposit Agreement, nor the Loan Documents in any material respect, may be modified or

amended without the express prior written approval of the DCEO Deputy Director, and no permitted modification or permitted amendment shall be binding except pursuant to a written instrument signed by the Parties sought to be bound.

Section 25. Lender Certifications.

- (A) Compliance with Applicable Law. The Lender certifies that it shall comply with all applicable provisions of Federal, State and local law in the performance of its obligations pursuant to this Deposit Agreement.
- (B) Defaults on Education Loans. The Lender certifies that this Deposit Agreement is not in violation of the Educational Loan Default Act (5 ILCS 385/3) prohibiting certain contracts to individuals who are in default on an educational loan.
- (C) Discrimination/Illinois Human Rights Act. The Lender certifies (i) that it will not commit unlawful discrimination in employment in Illinois as that term is defined in Article 2 of said Act; (ii) that it will comply with the provisions of Article 5 of the Act regarding equal employment opportunities and affirmative action; and, (iii) that it will comply with policies and procedures established by the Department of Human Rights under Article 7 of the Act regarding equal employment opportunities and affirmative action. The Lender further certifies that, if applicable, it will comply with the Public Works Employment Discrimination Act (775 ILCS 10/0.01 *et seq.*).
- (D) Federal, State and Local Laws; Tax Liabilities; State Agency Delinquencies. The Lender certifies that it will comply with all federal, state and local laws, including but not limited to the filing of any and all applicable tax returns. In no event may Borrower utilize loan funds to discharge outstanding tax liabilities or other debts owed to any governmental unit. The Lender certifies that (i) it is current as to the filing and payment of any federal, state and/or local taxes applicable to Lender; and (ii) it is not delinquent in its payment of moneys owed to any federal, state, or local unit of government.
- (E) Prohibition of Goods Derived from Child Labor. The Lender certifies, in accordance with the State Prohibition of Goods from Child Labor Act (30 ILCS 584/1 *et seq.*), that no foreign-made equipment, materials, or supplies furnished to the State in connection with this Deposit Agreement have been produced in whole or in part by the labor of any child under the age of 12.
- (F) Lien Waivers. The Lender shall monitor any construction undertaken as part of a Project to assure that necessary contractor's affidavits and waivers of mechanics liens are obtained prior to release of Loan funds to contractors and subcontractors.
- (G) Interagency Wetland Policy Act. The Lender certifies that any proposed Project is compatible with established state policy regarding wetlands, pursuant to the Interagency Wetland Policy Act of 1989 (20 ILCS 830/1 *et seq.*). The Lender acknowledges that the Illinois Department of Natural Resources may, from time to time, monitor a proposed Project to ensure continued compliance with the aforementioned Act. In the event that a

Project does not remain in compliance with the Act, such noncompliance shall constitute a breach of this Deposit Agreement, and failure to cure the breach within sixty (60) days after notice thereof will result in the termination of this Deposit Agreement and the refund of all funds in the Cash Collateral Account related to such Project.

- (H) Bid Rigging and Bid Rotating. The Lender certifies that it has not been barred from bidding on, entering into, or receiving State contracts as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code of 1961 (Bid Rigging or Bid Rotating, respectively) (720 ILCS 5/33E-3 and 5/33E-4).
- (I) Sexual Harassment. The Lender certifies it has written sexual harassment policies that include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the Lender's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department of Human Rights and the Human Rights Commission, including directions on how to contact them; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act (775 ILCS 5/2-105 *et seq.* and 775 ILCS 5/6-101). A copy of the policies shall be provided to the Department upon request.
- (J) Americans with Disabilities Act Compliance. The Lender certifies that services, programs, and activities contemplated under this Agreement are and will continue to be in compliance with the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 *et seq.*) and the regulations thereunder (28 CFR 35.130), which prohibit discrimination against persons with disabilities, whether directly or through contractual arrangements, in the provision of any aid, benefit, or service. The Lender further certifies that all facilities utilized by it in the performance of this Agreement comply with State accessibility laws.
- (K) International Anti-Boycott Certification. The Lender certifies that neither it nor any affiliate company is participating or will participate in an international boycott, as defined by the provisions of the U.S. Export Administration Act of 1979 or by the regulations of the U.S. Department of Commerce promulgated pursuant to the Act.
- (L) Drug-Free Workplace Act. The Lender certifies it is in compliance with the requirements of the Drug-Free Workplace Act (30 ILCS 580/1 *et seq.*).
- (M) Lender's Good Standing. The Lender certifies that it is in material compliance with all federal and state laws, rules, and regulations pertaining to the making of loans (including 31 C.F.R. § 103.121 and 31 C.F.R. § 1020.220); notwithstanding the above, if the Lender is under a Memorandum of Understanding or other regulatory action, it has submitted to DCEO a certification from its Corporate Counsel affirming that the Lender has addressed the issues raised by the government and is in substantial compliance with the regulator's guidance.
- (N) Historic Preservation. The Lender certifies that it will not expend funds under this Agreement which result in the destruction, alteration, renovation, transfer or sale, or

utilization of a historic property, structure or structures, or in the introduction of visual, audible or atmospheric elements to a historic property, structure or structures, which will result in the change in the character or use of any historic property, except as approved by the Illinois Historic Preservation Agency. Historic Preservation Act (20 ILCS 3420/1 *et seq.*).

- (O) Federal Taxpayer Identification Number, Name and Legal Status. The Lender certifies that it does business under the legal name of _____, which corresponds to the name of which the below listed FEIN is registered with the Internal Revenue Service. Under penalties of perjury, the Lender certifies that _____ is its correct Federal Taxpayer Identification Number (FEIN). The Lender does business as a (please check one):

_____ Individual (01)	_____ Governmental (08)
_____ Sole Proprietor (02)	_____ Nonresident Alien (13)
_____ Partnership/Legal Corporation (03)	_____ Estate or Trust (10)
_____ Tax Exempt (16)	_____ Pharmacy (Non-Corp.) (11)
_____ Corporation providing or billing medical and/or health care services	_____ Pharmacy/Funeral Home/ Cemetery (Corp.) (15)
_____ Corporation NOT providing or billing medical and/or health care services	_____ Limited Liability Company
	(select applicable tax classification)
	_____ D-Disregarded Entity
	_____ C-Corporation
	_____ P-Partnership

(NAME OF LENDING INSTITUTION)

By: _____
Printed Name: _____
Printed Title: _____

Date: _____

ILLINOIS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

By: _____
Printed Name: _____
Deputy Director – Office of Business Development

Date: _____

The undersigned has the requisite authority and power to sign below on behalf of the Borrower. The Borrower acknowledges, and accepts, the terms and conditions set forth in this Deposit Agreement. The Borrower shall take all action necessary to cause the terms and conditions in this Deposit Agreement to be satisfied in all respects. The Borrower further certifies that the statements below are true and correct as of the date hereof, and further represents and warrants to the Lender and DCEO that such statements shall continue to be true and correct during the life of the Loan.

(NAME OF BORROWER)

By: _____
Printed Name: _____
Printed Title: _____

Date: _____

1. The Borrower is a for-profit corporation or limited liability corporation, partnership or sole proprietorship having seven hundred fifty (750) or fewer employees and is authorized to conduct business in the State of Illinois.

2. The Borrower is not:
 - a. in the business of manufacturing or selling at wholesale, tobacco products, liquor or sexually explicit materials;
 - b. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the Borrower and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the Borrower;
 - c. a business that earns more than half of its annual net revenue from lending activities; unless the Borrower is a non-bank or non-bank holding company certified as a Community Development Financial Institution (CDFI);
 - d. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;
 - e. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted, including the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution; or
 - f. a business engaged in gambling enterprises, unless the Borrower earns less than 33 percent of its annual net revenue from lottery sales.
3. The Borrower is not an executive officer, director or principal shareholder of the Lender or a company which controls the Lender, or a subsidiary or affiliate of the Lender; nor a member of the immediate family of an executive officer, director or principal shareholder of the Lender or a company which controls the Lender, or a subsidiary or affiliate of the Lender; nor an entity controlled by an executive officer, director or principal shareholder of the Lender or a company which controls the Lender, or a subsidiary or affiliate of the Lender; nor a member of the immediate family of an entity controlled by an executive officer, director or principal shareholder of the Lender or a company which controls the Lender, or a subsidiary or affiliate of the Lender. For purposes of this paragraph, the terms "executive officer," "director," "principal shareholder," and "immediate family" shall be as defined in 12 C.F.R. Sec. 215.2 (1991), including any amendments thereto.
4. No principal of the Borrower has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911)).
5. The proceeds of the Loan will be used for a business purpose, and will not be used:
 - a. to repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
 - b. to repay taxes held in trust or escrow (e.g., payroll or sales taxes);
 - c. to reimburse funds owed to any owner of the Borrower, including any equity injection or injection of capital for the Borrower's continuance;

- d. to purchase any portion of any ownership interest in the Borrower;
- e. for activities that relate to acquiring or holding passive investments, such as commercial real estate ownership and the purchase of securities; and lobbying activities, as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended; or
- f. to refinance a loan previously made to the Borrower by the Lender.

6. The Borrower does business as a (please check one):

- | | |
|---|--|
| <input type="checkbox"/> Individual (01) | <input type="checkbox"/> Governmental (08) |
| <input type="checkbox"/> Sole Proprietor (02) | <input type="checkbox"/> Nonresident Alien (13) |
| <input type="checkbox"/> Partnership/Legal Corporation (03) | <input type="checkbox"/> Estate or Trust (10) |
| <input type="checkbox"/> Tax Exempt (16) | <input type="checkbox"/> Pharmacy (Non-Corp.) (11) |
| <input type="checkbox"/> Corporation providing or billing medical and/or health care services | <input type="checkbox"/> Pharmacy/Funeral Home/Cemetery (Corp.) (15) |
| <input type="checkbox"/> Corporation NOT providing or billing medical and/or health care services | <input type="checkbox"/> Limited Liability Company |
| | (select applicable tax classification) |
| | <input type="checkbox"/> D-Disregarded Entity |
| | <input type="checkbox"/> C-Corporation |
| | <input type="checkbox"/> P-Partnership |

7. The Borrower certifies that it is a Corporation, Partnership or other entity (other than individual) with:

- A) _____ 25 or more employees at the time of issuance of this contract,
- or
- B) _____ 24 or fewer employees at the time of issuance of this contract.

If Option "A" is checked, and the amount of the Cash Collateral is \$5,000 or greater, the Borrower is notified that the Drug Free Workplace Act is applicable to the Participation and it must comply with the terms of said Act. (30 ILCS 580/1 *et seq.*).

If Option "B" is checked, *or* the amount of the Cash Collateral is less than \$5,000, the Drug Free Workplace Act is not applicable to the Cash Collateral.

- 8. The Borrower certifies that it shall comply with all applicable provisions of Federal, State and local law in the performance of its obligations pursuant to the line of credit.
- 9. The Borrower certifies that entering into the loan is not in violation of the Educational Loan Default Act (5 ILCS 385/3) prohibiting certain contracts to individuals who are in default on an educational loan.
- 10. The Borrower certifies (i) that it will not commit unlawful discrimination in employment in Illinois as that term is defined in Article 2 of said Act; (ii) that it will comply with the provisions of Article 5 of the Act regarding equal employment opportunities and affirmative action; and, (iii) that it will comply with policies and procedures established by the Department of Human Rights under Article 7 of the Act regarding equal employment opportunities and affirmative action. The

Borrower further certifies that, if applicable, it will comply with the Public Works Employment Discrimination Act (775 ILCS 10/0.01 *et seq.*).

11. The Borrower certifies that it will comply with all federal, state and local laws, including but not limited to the filing of any and all applicable tax returns. In the event that the Borrower is delinquent in filing and/or paying any federal, state and/or local taxes, the Department shall disburse funds only if the Borrower enters into an installment payment agreement with said tax authority and remains in good standing therewith. The Borrower acknowledges and agrees it is required to tender a copy of any such installment payment agreement to the Department. The Borrower acknowledges and agrees that it may not utilize loan funds to discharge outstanding tax liabilities or other debts owed to any governmental unit. The Borrower certifies that (i) it is current as to the filing and payment of any federal, state and/or local taxes applicable to it; and (ii) it is not delinquent in its payment of moneys owed to any federal, state, or local unit of government.
12. The Borrower certifies, in accordance with the State Prohibition of Goods from Child Labor Act (30 ILCS 584/1 *et seq.*), that no foreign-made equipment, materials, or supplies furnished to the State in connection with this Agreement have been produced in whole or in part by the labor of any child under the age of 12.
13. The Borrower shall monitor any construction undertaken as part of a Project to assure that necessary contractor's affidavits and waivers of mechanics liens are obtained prior to release of Loan funds to contractors and subcontractors.
14. The Borrower certifies that any proposed Project is compatible with established state policy regarding wetlands, pursuant to the Interagency Wetland Policy Act of 1989 (20 ILCS 830/1 *et seq.*). The Borrower acknowledges that the Illinois Department of Natural Resources may, from time to time, monitor a proposed Project to ensure continued compliance with the aforementioned Act. In the event that a Project does not remain in compliance with the Act, such noncompliance shall constitute a breach of this Agreement, and failure to cure the breach within sixty (60) days after notice thereof will result in the termination of the Cash Collateral in such Loan/Project.
15. The Borrower certifies that it has not been barred from bidding on, entering into, or receiving State contracts as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code of 1961 (Bid Rigging or Bid Rotating, respectively) (720 ILCS 5/33E-3 and 5/33E-4).
16. The Borrower certifies it has written sexual harassment policies that include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the Borrower's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department of Human Rights and the Human Rights Commission, including directions on how to contact them; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act (775 ILCS 5/2-105 *et seq.* and 775 ILCS 5/6-101). A copy of the policies shall be provided to the Department upon request.
17. The Borrower certifies that services, programs, and activities contemplated under this Agreement are and will continue to be in compliance with the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 *et seq.*) and the regulations thereunder (28 CFR 35.130), which prohibit discrimination against persons with disabilities, whether directly or through contractual arrangements, in the provision of any aid, benefit, or service. The Borrower further certifies that

all facilities utilized by it in the performance of this Agreement comply with State accessibility laws.

18. The Borrower certifies that neither it nor any affiliate company is participating or will participate in an international boycott, as defined by the provisions of the U.S. Export Administration Act of 1979 or by the regulations of the U.S. Department of Commerce promulgated pursuant to the Act.
19. DCEO is authorized to publicize information regarding its Cash Collateral for the Loan, including, without limitations, information related to the name of the borrower, the amount of the Loan and the amount of the Cash Collateral of DCEO for the Loan. Notwithstanding the foregoing, DCEO is committed to protecting the privacy of its vendors, grantees and beneficiaries of programs and services. At times, DCEO may request social security numbers or other personal identifying information. Federal and state laws, rules and regulations require the collection of this information for certain purposes relating to employment and/or payments for goods and services, including, but not limited to, grants. DCEO also collects confidential information for oversight and monitoring purposes. Furnishing personal identity information, such as social security number, is voluntary; however, failure to provide required personal identity information may prevent an individual or organization from using the services/benefits provided by DCEO as a result of state or federal laws, rules and regulations.
20. The Borrower certifies that it will not expend any Loan funds which result in the destruction, alteration, renovation, transfer or sale, or utilization of a historic property, structure or structures, or in the introduction of visual, audible or atmospheric elements to a historic property, structure or structures, which will result in the change in the character or use of any historic property, except as approved by the Illinois Historic Preservation Agency. Historic Preservation Act (20 ILCS 3420/1 *et seq.*).

THIS SECTION TO BE COMPLETED BY AN APPLICANT RECEIVING A LOAN BASED ON MINORITY, FEMALE, DISABLED OR VETERAN OWNED BUSINESS STATUS. This information is for DCEO's use only.

21. The Borrower certifies that the applicant qualifies for this Loan based on Minority, Female, Disabled, or Veteran Owned Business status as defined in 30 ILCS 572/2 or 30 ILCS 750/9-4.3, as applicable, and certifies that it is one of the following entities (initial one).

_____ Minority Owned Business Applicant
_____ Female Owned Business Applicant
_____ Disabled Owned Business Applicant
_____ Veteran Owned Business Applicant

The Borrower acknowledges and agrees that the certifications made herein shall be considered representations made pursuant to the Loan Agreement related to the Loan with the same ramifications in the event they are inaccurate.

EXHIBIT A to Cash Collateral Deposit Agreement

CONFIRMATION OF RECEIPT OF CASH COLLATERAL

Allow this to confirm that on _____, 201__, _____ (name of bank) _____ ("Bank"),
received \$_____ in funds on behalf of the Illinois Department of Commerce and
Economic Opportunity ("DCEO") and have deposited said funds in a _____ (type of account) _____,
numbered _____, in the name of DCEO pursuant to that certain Cash Collateral
Deposit Agreement dated as of _____, 201__ between the Bank and DCEO.

(NAME OF LENDING INSTITUTION)

By:_____

Printed Name:_____

Printed Title:_____