

STATE SMALL BUSINESS CREDIT INITIATIVE
HI-CAP COLLATERAL SUPPORT PROGRAM
CASH COLLATERAL DEPOSIT AGREEMENT
BETWEEN
THE HAWAII GREEN INFRASTRUCTURE AUTHORITY
AND
LENDER

This **CASH COLLATERAL DEPOSIT AGREEMENT** (the "Deposit Agreement"), dated _____, is between the **Hawaii Green Infrastructure Authority**, an instrumentality of the State of Hawaii ("HGIA") whose address is P.O. Box 2359, Honolulu, HI 96804 and _____ (the "Lender"), whose address is _____. HGIA and the Lender are, individually, a "Party" and, collectively, the "Parties".

RECITALS

WHEREAS, the American Rescue Plan Act of 2021 appropriated \$10 billion to the State Small Business Credit Initiative (SSBCI) program to provide relief to small businesses struggling to recover from the economic effects of the COVID-19 pandemic; to ensure business enterprises owned and controlled by socially and economically disadvantaged individuals have access to credit and investment opportunities; and to provide technical assistance to aid small businesses applying for various support programs;

WHEREAS, the SSBCI program was first established by the Small Business Jobs Act of 2010 to provide access to capital for small businesses. At that time, the Hawai'i Strategic Development Corporation ("HSDC") served as the lead agency for the State of Hawai'i and invested the \$13 million appropriation to kick-start the venture capital industry in Hawai'i. Subsequently, on July 1, 2019 per Act 056, Session Laws of Hawaii 2019, HSDC and its programs, including the SSBCI program, merged into the Hawaii Technology Development Corporation ("HTDC");

WHEREAS, the minimum allocation of the SSBCI appropriated to Hawai'i by the American Rescue Plan Act is \$56,234,176. Additional funds for technical assistance may potentially be available to States that are able to deliver on the program goals of reaching underserved priority businesses;

WHEREAS, on November 30, 2021, Governor David Ige designated HTDC as the state agency to implement the SSBCI program, to be known as the Hawaii Small Business Capital ("HI-CAP") Program to strengthen state programs that support private financing to small businesses, and deployed through a Collateral Support Program ("HI-CAP Collateral"), a Loan Participation Program, ("HI-CAP Loans") and a Fund of Funds Program ("HI-CAP Invest");

WHEREAS, HGIA is a partner in the implementation of the SSBCI program to create, implement and administer the HI-CAP Collateral and HI-CAP Loans Programs to help small businesses access private financing to support and grow their business;

WHEREAS, Act 107, SLH 2021, expanded HGIA's functions, powers and duties to include implementing and administering loan programs on behalf of other state departments or agencies through a memorandum of agreement and expend funds appropriated to the department or agency for purposes authorized by the legislature;

WHEREAS, on March 23, 2022, HTDC and HGIA executed a Memorandum of Agreement for HGIA to administer the HI-CAP Collateral and HI-CAP Loans Programs, and to receive and disburse SSBCI funds within said SSBCI Programs administered by HGIA;

WHEREAS, on May 19, 2022, the US Department of Treasury approved the State of Hawaii's SSBCI application;

WHEREAS, during its July 6, 2022 meeting, HTDC's Board ratified the SSBCI Application approved by the US Department of Treasury, including the creation of the Loan Participation and Collateral Support Programs under the administration of HGIA;

WHEREAS the Lender and HGIA have previously entered into a Participating Lender Agreement dated _____ (the "Participating Lender Agreement") providing for the Lender's participation in the HI-CAP Collateral Program;

WHEREAS, The Borrower (defined below) desires to obtain a loan from the Lender to _____ (the "Project"); and

WHEREAS, HGIA and the Lender desire to sign this Deposit Agreement to provide for the pledge by HGIA of cash collateral to the Lender under the HI-CAP Collateral Program.

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

Section 1. The Loan. _____, a _____ (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");

Principal Loan Amount: _____ Dollars and ____/00 (\$_____)
(the "Loan", or the "Loan Limit").

Amount of Collateral Support Requested: _____% of the Term Loan, Revolving Loan or Draw to Term Loan (the "Collateral Support Percentage"). Please note, the maximum allowable is the lesser of 20% of the loan amount or \$1,000,000.

The Loan is (check one box below):

- Term Loan.** A term loan (fixed amount with specified repayment schedule (the "Term Loan")); or a
- Revolving Line of Credit.** A revolving line of credit (open line of credit allowing for cycles of advances and repayment (the "Revolving Loan")); or a
- Draw to Term Line of Credit.** A non-revolving construction or other line of credit allowing for a fixed drawdown period requiring interest only or other reduced payments for a specified period, converting to a fixed amount term loan with a specified repayment schedule (the "Draw to Term Loan").

The original Loan Documents shall be retained by the Lender, and copies of all Loan Documents shall be forwarded to HGIA upon execution.

Section 2. Amount of Cash Collateral. Upon receipt of the executed Loan Documents, including the executed Deposit Agreement, HGIA shall deposit the following principal amount of cash collateral with the Lender in account no. _____ in the name of HGIA maintained with the Lender (the "Cash Collateral Account"):

HGIA Cash Collateral: _____ Dollars and ____/00 (\$_____) (the "Initial Deposit") (the Initial Deposit, and any reductions thereto as provided in this Deposit Agreement, collectively, the "Cash Collateral").

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), HGIA grants to the Lender, a continuing security interest, whether now owned or later owned, acquired or arising in the following:

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

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

Notwithstanding anything to the contrary in this Deposit Agreement: (i) HGIA 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 HGIA, 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 Cash Collateral Account secures the Term Loan only up to an amount not to exceed the lesser of (i) the Initial Deposit or (ii) the Collateral Support Percentage indicated above multiplied by the outstanding principal balance of the Term Loan up to the Loan Limit (the amount determined from time to time under clause (ii), being referred to as the "Term Loan Collateral Requirement"), or
- For a Revolving Loan, the Cash Collateral secures the Revolving Loan only up to an amount not to exceed the lesser of: (i) the Initial Deposit or (ii) the Collateral Support Percentage indicated above multiplied (a) during the period when advances of the Revolving Loan are available under the applicable Loan Documents, by an amount equal to the Loan Limit, as such Loan Limit may be reduced in accordance with the applicable Loan Documents, and (b) thereafter, by the outstanding principal amount of the Revolving Loan (the amount determined under clause (ii)(a) or (b), as applicable, being referred to as the "Revolving Loan Collateral Requirement")i, or
- For a Draw to Term Loan, the Cash Collateral secures the Draw to Term Loan only up to an amount not to exceed the lesser of: (i) the Initial Deposit or (ii) the Collateral Support Percentage indicated above multiplied (a) during the draw period for the Draw to Term Loan, by an amount equal to the Loan Limit, as such Loan Limit may be

reduced in accordance with the applicable Loan Documents, and (b) thereafter, by the outstanding principal amount of the Draw to Term Loan (the amount determined under clause (ii)(a) or (b), as applicable, being referred to as the “Draw to Term Loan Collateral Requirement”)

Section 4. Perfection of Security Interest. HGIA authorizes the Lender to file financing statement(s) describing the Cash Collateral and Cash Collateral 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 Cash Collateral Account. The Executive Director of HGIA or such other officer of HGIA as may be designated by the Executive Director 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 Cash Collateral Account and the Cash Collateral for purposes of the Uniform Commercial Code in Hawaii.

Section 5. Permitted Investments. If requested by HGIA, the Lender will, from time to time, invest amounts on deposit in the Cash Collateral 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 Executive Director of HGIA or such other officer of HGIA as may be designated by the Executive Director 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 Cash Collateral Account, or any interest, dividends, and proceeds from reinvestment, in any other form of account without the express prior written consent of the Executive Director or another officer of HGIA designated by the Executive Director.

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 HGIA, upon the first to occur of:

- (a) payment or credit in full of the outstanding Term Loan, Revolving Loan or Draw to Term Loan, as applicable; provided that Revolving Loans and Draw to Term Loans shall not be considered paid or credited in full if any further advances or draws are permitted with respect to such Loans under the applicable Loan Documents;
- (b) an Event(s) of Default (as defined below) by the Lender;
- (c) in the event of, and coincident with, the occurrence of actions described in Section 14(b) (only the extent to which there is a balance remaining after application of the Cash Collateral as provided by Section 14(b));
- (d) upon the expiration of the maturity date of the Term Loan, Revolving Loan or Draw to Term 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 14(b); or
- (e) upon determination by the Lender that the cash collateral, in full or in part, is no longer necessary to support and secure the outstanding Loan.

Upon such event, all funds and other investment property representing the Cash Collateral shall be the sole and separate property of HGIA, 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 Cash Collateral Account, be disbursed by HGIA at its sole discretion. The Lender agrees to promptly execute and deliver to HGIA all documents that HGIA 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) The Lender shall provide HGIA with copies of the final loan approval, including the spread and analysis of borrower and guarantor (as applicable) financial statements or financial statements provided by the Borrower to the Lender, if said financial statement spread and analysis is not included in the Lender's loan approval packet, and copies of all Loan Documents. Unless the Executive Director of HGIA specifically exempts one or more specific documents (under terms and conditions acceptable to the Executive Director), the Lender shall provide HGIA with any additional documents in its possession or control arising out of, or related to, the Loan or the Loan Documents. In addition, to the extent Borrower is a real estate holding company using the proceeds of the Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company, Lender shall also deliver to HGIA a fully executed copy of the "Operating Company Certification".

(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 HGIA, provided however, the Lender may not, without the express prior written approval of the Executive Director of HGIA, by amendment or otherwise: (i) increase the amount of the Loan (ii) amend any of the Lender warranties and representations herein or any of the Borrower's representations in the Borrower's Certificate and Agreement submitted with the Loan Documents, or (iii) waive or release any claim against any Borrower or any co-maker, guarantor, endorser, other debtor or obligor of the Loan; or (iv) consent to any release, substitution, or exchange of collateral, except (a) sales of inventory in the ordinary course of business or (b) sales, substitution and exchange of worn or obsolete equipment in the ordinary course of business, or (c) sales of collateral in the event of liquidation of collateral as a result of an occurrence of an event described in Section 14(b); or (v) effectuate any of the circumstances in Section 7(c)(i), Section 7(c)(ii), Section 7(c)(iii) or Section 7(c)(iv).

(d) Upon the request of HGIA, as necessary to comply with SSBCI requirements, the Lender shall provide HGIA with copies of current financial statements and tax returns provided by the Borrower to the Lender.

Section 8. Fees to HGIA. The Lender shall pay HGIA a Closing Fee and an Annual Fee as set forth below. Said fees may be charged by the Lender to the Borrower:

(a) a closing fee equal to the greater of 50 basis points (0.5%) of the value of the Initial Deposit or \$50.00 ("Closing Fee"). This Closing Fee shall be paid by the Lender to HGIA at the time of the closing of the Loan Documents, and

(b) an annual fee (the “Annual Fee”) shall be paid by the Lender to HGIA. Sixty (60) days before the anniversary of the loan closing date, HGIA will remit an Annual Fee Invoice to the Lender. The Annual Fee Invoice shall be the product resulting from multiplying the Term Loan Collateral Requirement, Revolving Loan Collateral Requirement or Draw to Term Loan Collateral Requirement, as applicable under Section 3 above by 50 basis points (0.5%) (Example: Annual Fee = Collateral Account Requirement x .005). The minimum Annual Fee due will be \$50.00.

The Lender shall remit payment of the Annual Fee to HGIA within seventy-five (75) days from the date of the Annual Fee Invoice. The actual Annual Fee paid shall be based on the actual Term Loan Collateral Requirement, Revolving Loan Collateral Requirement or Draw to Term Loan Collateral Requirement, as applicable under Section 3 above multiplied by the Collateral Support Percentage still required by the Lender to support the loan, multiplied by 50 basis points. (Example: Actual Annual Fee = Actual Term Loan Principal Balance x Collateral Support % x .005). A copy of the current loan statement, detailing the current loan balance, shall be submitted to HGIA along with the Annual Fee payment. As may be requested by HGIA, the Lender shall provide all detail regarding the breakdown of individual payments, credits, fees, or other charges against the Loan, including without limitation, itemization of the foregoing items. This Section shall survive any termination of this Deposit Agreement until all applicable fees are paid in full to HGIA.

Section 9. Reductions to Cash Collateral / HGIA Access to Cash Collateral.

Lender acknowledges that the balance of the Cash Collateral Account does not determine the amount of Cash Collateral. Regardless of the balance of the Cash Collateral Account, amounts in the Cash Collateral Account available as Cash Collateral shall: (i) not include Account Income, and (ii) shall be reduced by the applicable of following (the following, and including Account Income, are collectively “Reduction(s)”):

(a) in the case of a Term Loan, the amounts in the Cash Collateral Account in excess of the lesser of (i) the Initial Deposit, or (ii) the then current Term Loan Collateral Requirement ; or

(b) in the case of a Revolving Loan, the amounts in the Cash Collateral Account in excess of the lesser of (i) the Initial Deposit, or (ii) the then current Revolving Loan Collateral Requirement; or

(c) in the case of a Draw to Term Loan, the amounts in the Cash Collateral Account in excess of the lesser of (i) the Initial Deposit, or (ii) the then current Draw to Term Loan Collateral Requirement.

Upon written notice from HGIA, the Lender shall release to HGIA the Reductions from the Cash Collateral Account (the “Release”). HGIA shall provide the Lender a report detailing the loan supported in the Cash Collateral Account, along with the corresponding cash supporting the loan.

Nothing in this Section shall be deemed to imply or impose upon HGIA any obligation to increase the amount of the Cash Collateral. Further, effectuation of a Reduction for purposes of determining the amount of Cash Collateral available as security under this Agreement is not dependent on HGIA requesting a Release. After the application of the Cash Collateral (based on availability as determined by Section 3 and taking into account applicable Reductions) pursuant to Section 14(b)(i) or 14(b)(ii), the Lender shall release any remaining balance in the Cash Collateral Account to HGIA within a commercially reasonable amount of time, regardless of any

remaining indebtedness of the Borrower, whether requested by HGIA or not. This Section shall survive termination of the Deposit Agreement for a period of one year after termination of the Deposit Agreement.

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

(a) HGIA is an agency attached to the Department of Business, Economic Development and Tourism of the State of Hawaii. HGIA 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 further approval is necessary from any governmental authority as a condition to the execution and delivery of this Deposit Agreement by HGIA or the performance of any of its obligations under this Deposit Agreement;

(c) HGIA 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, Revolving Loan , or Draw to Term Loan , whichever is applicable.

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

(c) Lender has performed a credit analysis of the Borrower satisfactory to the Lender;

(d) upon closing of the Loan, the Lender 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, to the actual or constructive knowledge of the Lender, no party to the Loan has any defense or claim against the Lender arising out of the Loan;

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

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

Section 12. Additional Obligations of Lender. The Lender shall:

(a) promptly notify HGIA in writing (and describe in reasonable detail) of any breach of any representation or warranty of the Lender in this Deposit Agreement, or any breach of any representation or warranty of the Borrower in any of the Loan Documents; and

(b) promptly notify HGIA in writing of any of the following actions by or on behalf of the Lender (including providing copies to HGIA of any notices or other documents from Lender arising therefrom): (i) any acceleration of any payment under any of the Loan Documents; (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; (iii) the seizure, sale, transfer, assignment, foreclosure, or attempt to exercise against any collateral securing the Loan, including without limitation, Lender's direction to the Borrower to sell or liquidate the collateral securing the Loan (iv) any forbearance or similar arrangements with respect to the Loan, or (v) any written notice provided by Lender to the Borrower, any guarantor or other endorser with respect to the Loan.

Section 13. Other Loans by Lender. HGIA acknowledges that the Lender may have other existing loans with the Borrower and may, in the future, make additional loans to the Borrower. The Lender has no obligation to attempt to collect Loan payments in preference over the collection or enforcement of any other loan with the Borrower. The Lender shall, however, first take control and sell/liquidate (via foreclosure, deed-in-lieu of foreclosure, possession, exercising assignments of rights, or other similar action), or cause the Borrower to take control and sell/liquidate (via foreclosure, deed-in-lieu of foreclosure, possession, exercising assignments of rights, or other similar action), as the case may be, of all of the collateral securing the HI-CAP Collateral supported Loan per the executed Loan documents (collectively, the "Primary Collateral"), and apply all the gross proceeds thereof to the Loan prior to drawing any Cash Collateral 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 Primary Collateral are not sufficient to repay in full the amount due under the Loan, then the Lender may draw Cash Collateral (taking in to account applicable Reductions) 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 14(b) below. Provided that, in such case that the proceeds of the liquidation of the Primary Collateral are sufficient to pay off and otherwise discharge the Loan without drawing on the Cash Collateral from the Cash Collateral Account, any remaining proceeds of the Primary Collateral may be applied by the Lender to pay off any other obligations of the Borrower not arising under the Loan.

Section 14. 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 HGIA with all notices to the Borrower, and further provide HGIA written notice describing in reasonable detail the circumstances of the event of default; and

(b) prior to drawing Cash Collateral from the Cash Collateral Account to repay the Loan, the Lender shall first take control (via foreclosure, deed-in-lieu of foreclosure, possession, exercising assignments of rights, or other similar action) of any and all Primary Collateral, or provide written direction to the Borrower to sell or liquidate the Primary Collateral, or any combination thereof, and, as the case may be, the Lender shall sell or liquidate, or cause the Borrower to sell or liquidate, the Primary Collateral and apply the proceeds thereof to the Loan. (The gross proceeds from the sale or liquidation of the Primary 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 Primary Collateral"; and the difference between the Gross Proceeds from Primary Collateral and the amount due under the Loan shall be deemed the "Remaining Default Principal Balance").

(i) To the extent the Gross Proceeds from Primary Collateral is equal to or greater than the underwritten value assigned by the Lender for the Primary 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 HGIA, 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, less any unpaid Annual Fees as provided by Section 8 (after taking into account applicable Reductions), against the Remaining Default Principal Balance.

(ii) To the extent the Gross Proceeds from Primary Collateral is less than the Underwriting Value for Lending Purposes then, upon at least forty-five (45) calendar days prior written notice to HGIA, 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, less any unpaid Annual Fees as provided by Section 8, (after taking into account applicable Reductions), against the Remaining Default Principal Balance.

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

(c) In the event that the Cash Collateral or any portion thereof is applied to the Remaining Default Principal Balance under subsection (b) above, HGIA shall be legally subrogated to all rights of the Lender to collect amounts due on the Loan and to enforce its rights under the Loan Documents against the Borrower and/or the Primary Collateral; but such subrogation shall be limited to the amount of Cash Collateral so applied and shall be subordinate and subject to the right of the Lender to recover the full amount of the Loan in priority to HGIA.

Section 15. 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 Executive Director of HGIA:

(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 HGIA within forty-five (45) calendar days after written notice thereof by HGIA 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 any one 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, HGIA shall be entitled to pursue and enforce all rights and remedies available to HGIA, 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 HGIA, at HGIA'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 HGIA 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 HGIA in enforcing any obligation of the Lender arising from or under the Loan, any of the Loan Documents, or this Deposit Agreement.

Section 16. Termination. Except as provided elsewhere in this Deposit Agreement with respect to certain rights and obligations, this Deposit Agreement shall terminate on the first to occur of i) the charge, set-off, or other application of any portion of the Cash Collateral by the Lender as permitted by, and in accordance with, this Deposit Agreement or ii) the disbursement of all of the Cash Collateral, along with any Account Income or other funds in the Cash Collateral Account to HGIA as permitted by, and in accordance with, this Deposit Agreement.

Section 17. Notices. Any notice or other communication under this Deposit Agreement shall be in writing and e-mailed, 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 and as identified in the Participating Lender 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 18. Counterparts; Facsimile/Pdf Signatures. This Deposit Agreement may be signed in any number of counterparts, each of which when executed and delivered, shall constitute and be deemed an original and all of which together shall constitute one and the same Deposit Agreement, with the same effect as if the signatures thereto and hereto were upon the same instrument, notwithstanding that all of the Parties are not signatories to the same original or counterpart, or that signature pages from different counterparts are combined. The signature of any Party to any counterpart shall be deemed to be a signature to and may be appended to any other counterpart. Electronically transmitted or facsimile copies of original signature pages shall be deemed to be, and shall be legally effective as, originally signed signature pages for all purposes of this Deposit Agreement.

Section 19. 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 20. 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 21. Governing Law. This Deposit Agreement is a contract made under the laws of the State of Hawaii, and for all purposes shall be governed by, and construed in accordance with, the laws of the State of Hawaii.

Section 22. Relationship between Parties. The Lender, and its officers, directors, agents and employees shall not describe or represent themselves as agents of the State of Hawaii, HGIA, or HTDC to any person, firm or entity for any purpose.

Section 23. 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 Hawaii), HGIA 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. 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 Executive Director of HGIA. This Deposit Agreement shall bind the permitted successors and permitted assigns of the Parties.

Section 24. 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 25. 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 Executive Director of HGIA. Any amendment to this Deposit Agreement shall be pursuant to a written instrument signed by the Parties.

[Remainder of page intentionally left blank; the signatures of the Parties are contained on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Deposit Agreement as of the date first written above.

LENDER

_____,
a _____

By: _____
Name: _____
Its: _____

Date: _____

HAWAII GREEN INFRASTRUCTURE AUTHORITY
an instrumentality of the State of Hawaii

By: _____
Gwen Yamamoto Lau
Its: Executive Director

Date: _____

SAMPLE

[SIGNATURE PAGE]