

HI-CAP Collateral Support Program

Participating Lender's Guide



December 2023



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I. Background

The State Small Business Credit Initiative (SSBCI) program was first established by the Small Business Jobs Act of 2010 to increase access to capital for small businesses. The Department of Treasury administers the program to provide states and territories opportunities to expand its existing small business programs or to design and implement new programs through public-private financing. The funds generated from these programs were to remain within the states to be recycled to help support more small businesses.

On March 11, 2021, President Biden signed The American Rescue Plan Act (“ARPA”), which reauthorized and funded the State Small Business Credit Initiative (SSBCI). In the new SSBCI (2.0) program, ARPA appropriated \$10 billion to: support small businesses responding to and recovering from the economic effects of the COVID-19 pandemic, ensure business enterprises owned and controlled by socially and economically disadvantaged individuals have access to credit and investments, and provide technical assistance to help small businesses applying for various support programs.

The Hawaii Technology Development Corporation (“HTDC”), is designated as the lead agency for the State and has partnered with the Hawaii Green Infrastructure Authority (“HGIA”), an agency attached to the Department of Economic Development and Tourism (“DBEDT”), to establish and jointly administer the Hawaii Small Business Capital Program (“HI-CAP”).

II. Purpose of Document

The State’s objectives for the HI-CAP Program are to provide financial support to small businesses rebounding from the COVID-19 pandemic by expanding access to capital and advance State the goals, while maximizing the federal award; number of businesses assisted; private sector leverage; return on investment and the economic development impact.

There are three (3) sub-programs to help small businesses in Hawaii:

A. Collateral Support Program (“HI-CAP Collateral”), established to assist small businesses in obtaining financing at reasonable terms. The program is designed to provide cash collateral to Participating Lenders to enhance the collateral coverage of borrowers who would not otherwise be able to obtain financing on reasonable terms and conditions. HI-CAP Collateral will provide collateral to very small, small, and mid-market sized companies; hard to finance industries (startups, etc.); and Socially Economically Disadvantaged Individual (SEDI) owned companies.

Collateral deposits are established on an individual loan basis and are available to cover loan losses in the event of default by the borrower. Upon loan maturity, deposits are returned to the HI-CAP Collateral Program for recycling to other qualified small business borrowers.

B. Fund of Funds Program (“HI-CAP Invest”), established to invest into high-quality private investment funds within targeted sectors. The State operated Fund of Funds Program, which invests capital in more than one fund, may include venture capital (“VC”), social impact, and/or other alternative finance funds, as a limited partner. The funds will target pre-seed, seed, or Series A investment rounds.

C. Loan Participation Program (“HI-CAP Loans”), established to provide financing (either as a participant or co-lender) to projects that are catalytic and/or have community impact including capitalizing our local non-depository CDFI business loan programs. This program will be modeled similar to HGIA’s Green Energy Money Securitization (“GEMS”) Program, which provides low-cost capital to finance clean energy improvements for underserved ratepayers. The “HI-CAP Community Development Financial Institution (CDFI) Loan Pool Program” is a sub-program within the HI-CAP Loans program.

HI-CAP operates its programs and services without regard to race, color or national origin and in compliance with Title VI of the Civil Rights Act of 1964.

The following is intended to be a guide to assist Participating Lenders in understanding the federal and state requirements of **the HI-CAP Collateral Program**.

SSBCI Guidance (and updates) can be found on the US Department of the Treasury’s website under Program Rules and Materials: [State Small Business Credit Initiative \(SSBCI\) | U.S. Department of the Treasury](#), and more specifically “SSBCI Capital Program Policy Guidelines: Sections VII.f and VIII.f”.

III. Participating Lenders

- A. **“Participating Lender”** means a financial institution, as defined in section 412:1-109, Hawaii Revised Statutes and includes Federal or state-chartered banks, savings associations, federally certified Community Development Financial Institutions (CDFI) and credit unions, or a private or public lender approved by HGIA.
- B. **Eligibility.** To be eligible, a Financial Institution must submit a *Participating Lender Application* (see **Appendix A**) and certify that:
- a. It will comply with all requirements of the HI-CAP Collateral and State Small Business Credit Initiative Program, including but not limited to the following:
 - i. **Sex Offender Lender Certification.** No principal(s) of the Financial Institution has been convicted of a sex offense against a minor (as such terms are defined in 34 U.S.C. § 20911). For the purposes of this certification, “principal” means the following: if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.
 - ii. **Regulatory Good Standing.** The Financial Institution certifies that it is not subject to a cease-and-desist order or other regulatory sanction with the appropriate federal or state regulatory body (Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Comptroller of Currency, Thrift Supervision, National Credit Union Administration (NCUA), or state banking authority). The Financial Institution further agrees to immediately notify HGIA should there be a change in its regulatory standing which could impair its ability to participate in the Program.
 - iii. **Criminal and Civil Matters.** To the best of the Financial Institution’s knowledge, neither the Financial Institution nor any of its affiliates, subsidiaries, officers, directors and any person who, directly or indirectly, holds a pecuniary interest in the Financial Institution of 20% or more: (i) have any criminal convictions incident to the application for or performance of a state contract or subcontract, and (ii) have any criminal convictions or have been held liable in any civil proceeding that negatively reflects on the person’s business integrity, including without limitation, 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.
 - iv. **Lender Use of Proceeds Certification.** The Financial Institution will certify that it will adhere to guidelines listed in the ‘SSBCI Requirements’ section contained in this document and the U.S. Treasury’s SSBCI Capital Program Policy Guidelines.
 - b. It is in compliance with the requirements of 31 C.F.R. §103.121 (Customer Identification Programs for banks, savings associations, credit unions and certain non-Federally regulated banks);
 - c. It will bear 20 percent or more of the risk of loss in any transaction with an SSBCI supported loan;
 - d. It has a valid Federal Taxpayer Identification Number and Hawaii State General Excise Tax Number, and agrees to submit a signed IRS Form W-9 “Request for Taxpayer Identification Number & Certification”; and

- e. It is in compliance with the State’s Workers Compensation Insurance requirements and carries General Liability coverage with limits no less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. The Financial Institution also agrees to add HGIA as an additional insured with an endorsement on its insurance policies. The endorsement shall also provide that HGIA receive thirty (30) days prior written notice of cancellation or material change in policy provision. Proof of insurance coverage shall be submitted and updated annually.

C. **Participating Lender Agreement.** Financial Institutions enrolled into the program shall submit an executed **Participating Lender Agreement** (see **Appendix B**).

IV. SSBCI Eligibility Requirements - Borrowers

The Participating Lender is responsible to determine if the proposed borrower, loan purpose and loan meets SSBCI eligibility requirements.

A. Eligible Borrowers:

1. Applicant is registered to do business in Hawaii.
2. Applicant is headquartered¹ in Hawaii. If the applicant’s headquarter is located outside of the State of Hawaii, written justification must be submitted with the Loan Enrollment form stating the benefits of providing SSBCI support for a business headquartered outside of Hawaii.
3. The organizational structure of the applicant is a for-profit corporation, sole proprietorship, limited liability company, partnership, limited liability partnership, joint venture, nonprofit or cooperative.
 - a. Eligible applicants may also include state-designated charitable, religious, or other non-profit or philanthropic institutions; government-owned corporations; consumer and marketing cooperatives; and faith-based organizations, provided the loan is for a “business purpose” as defined above.
4. The applicant employs 500² or fewer employees (includes full-time, part-time, seasonal employees as well as employees obtained through a temporary employee agency, professional employee organization or leasing concerns).
 - a. Employees of affiliated companies must be included with the Applicant’s employees to determine if it meets the maximum 750 employee eligibility requirement.
5. The applicant is able to provide assurances (by way of the Certificate and Agreement of Borrower) affirming that it is not:
 - a. an executive officer, director, or principal shareholder of the Participating Lender;
 - b. a member of the immediate family of an executive officer, director, or principal shareholder of the Participating Lender; or
 - c. a related interest or immediate family member of such an executive officer, director, or principal shareholder³ of the Participating Lender.
6. Principal(s)⁴ of the applicant have not been convicted of a sex offense against a minor (as such terms

¹ The HI-CAP Collateral Program requires at least 90% of the SSBCI funds allocated must support businesses headquartered in Hawaii. HGIA will monitor this requirement.

² The HI-CAP Collateral Program is targeting businesses with 500 employees or less, however, the Program allows businesses with up to 750 employees.

³ For purposes of these three borrower restrictions, the terms “executive officer,” “director,” “principal shareholder,” “immediate family,” and “related interest” refer to the same relationship to a financial institution lender as the relationships described in 12 C.F.R. part 215.

⁴ For the purposes of this requirement, “principal” is defined as “if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, or other entity, each director, each of the five most highly compensated executives or officers or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.

are defined in 34 U.S.C. §20911).

7. Neither the applicant nor or any of its affiliates, subsidiaries, officers, directors and any person who, directly or indirectly, holds a pecuniary interest in the applicant of 20% or more: (i) have any criminal convictions incident to the application for or performance of a state contract or subcontract, and (ii) have any criminal convictions of have been held liable in any civil proceeding that negatively reflects on the person's business integrity, including without limitation, 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. Also, the applicant is not in material violation of any federal or state law, judgment, decree, order, or governmental rule or regulation.
8. Minority, Women or Veteran-owned or controlled⁵ business enterprises are encouraged.

B. Ineligible Borrowers:

1. A business engaged in speculative activities that profit from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade.⁶
2. A business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company.⁷
3. 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.
4. A business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedure 50 10 6.⁸
5. A business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant.

V. SSBCI Eligibility Requirements – Loan Purposes

A. Eligible Loan Purposes

Eligible Business Purposes include but are not limited to the following:

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| ✓ Start-up costs | ✓ Working capital |
| ✓ Franchise fees | ✓ Inventory |
| ✓ Purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes | ✓ Business acquisitions and expansions |
| | ✓ Equipment purchases |

⁵ The term "owned and controlled" means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community of which the institution services is predominantly comprised of such individuals.

⁶ A construction loan permitted under *Business Purpose: Passive Real Estate Investment Guidance – 12 U.S.C. § 5704(e)(7)(A)(i)(I)* will not be considered a speculative business for purposes of SSBCI.

⁷ When a participating state makes a loan to an eligible CDFI, the CDFI may re-lend the funds to other entities. If a CDFI re-lending transaction is eligible and meets all SSBCI program requirements, including obtaining all required assurances and certifications, the participating state may include private financing caused by and resulting from the re-lending transaction in the state's private leverage ratio.

⁸ SBA Standard Operating Procedure 50 10 6, Lender and Development Company Loan Programs (effective October 1, 2020) ("Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance.").

B. Impermissible Business Purposes

An impermissible business purpose includes, acquiring or holding passive investments in real estate (with exceptions below), 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).⁹

Additional impermissible purposes include: pyramid schemes; speculative activities; illegal products or activities; legal products used for illegal purposes; the purchase of securities; legal or illegal gambling; or evangelizing, proselytizing, or lobbying.

C. Passive Real Estate Investment Exceptions

The borrower must not use loan proceeds to acquire or hold passive real estate investments unless borrower meets one of the following:

1. a passive company such as a holding company that acquires real property using an SSBCI-supported loan may have an eligible business purpose where 100 percent of the rentable property is leased to the passive company's affiliated operating companies that are actively involved in conducting business operations. To meet this exception, the following criteria must also be met:
 - a. The passive company must be an eligible small business using the affiliate and employee definitions described above.
 - b. The operating company must be subject to the same sublease restrictions as the owner affiliate;
 - c. The operating company must be a guarantor or co-borrower on the SSBCI-supported loan to the eligible passive company.
 - d. Both the passive company and the operating company must execute SSBCI borrower use-of-proceeds certifications and sex-offender certifications covering all principals.
 - e. Each natural person holding an ownership interest constituting at least 20 percent of either the passive company or the operating company must provide a personal guarantee for the SSBCI-supported loan; and
 - f. The passive company and the operating company have a written lease with a term at least equal to the term of the SSBCI-supported loan (which may include options to renew exercisable solely by the operating company).
2. Second, a construction loan with an original principal amount of \$500,000 or less may have an eligible business purpose if:
 - a. the building will not serve as a residence for the owner, their relatives, or affiliates.
 - b. the building will be put into service immediately.
 - c. the loan is underwritten and made for the purpose of constructing or refurbishing a structure; and
 - d. the building has not been and will not be financed by another SSBCI-supported loan.
 - e. Excluded from eligible business purpose are loans that automatically convert into permanent financing, except if the converted loans would no longer rely on SSBCI support. The term "construction loan" means a loan secured by real estate made to finance:
 - i. land development (e.g., the process of improving land, such as laying sewers or water pipes) preparatory to erecting new structures; or
 - ii. the on-site construction of industrial, commercial, residential, or farm buildings. For purposes of this paragraph, "construction" includes not only construction of new structures, but also additions or alterations to existing structures and the demolition of existing structures to make way for new structures.

⁹ The Act defines "lobbying activities" as "lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others."

D. Prohibited Loan Purposes

Each financial institution lender must obtain an assurance from the borrower affirming that the loan proceeds will not be used to:

1. Repay delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority.
2. Repay taxes held in trust or escrow (e.g., payroll or sales taxes).
3. Reimburse funds owed to any owner, including any equity investment or investment of capital for the business's continuance.
4. Purchase any portion of the ownership interest of any owner of the business,¹⁰ except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.
5. Refinance a loan previously made to the borrower by the financial institution lender or an affiliate of the financial institution lender and complies with all applicable SSBCI requirements related to refinancing in 'Prohibited Loan Purposes Exceptions' section below.
6. Enroll any portion of an SBA-guaranteed loan or the unguaranteed portion of any other federal loan for the same loan purpose as the SBA or other federal loan.

E. Prohibited Loan Purposes Exceptions

1. *New Extensions of Credit by Existing Lenders.* ^{11[00]} loan or other debt that was previously used for an eligible business purpose when **all** the following conditions are met, with accurate records kept:
 - a. The amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt.
 - b. The new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay the loan and a new approval by the lender.
 - c. The prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter).
 - d. Proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

The limitation on refinancing does not prohibit a Participating Lender from originating a new loan under an SSBCI approved program and subsequently refinancing the same loan under any approved program.

2. *New Lenders.* A Participating Lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:
 - a. The amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance;
 - b. The transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that SSBCI funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and
 - c. Proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

¹⁰ This prohibition applies to the acquisition of shares of a company or the partnership interest of a partner when the proceeds of the loan directly supported by SSBCI funds will go to any existing owner or partner.

¹¹ A matured loan or line of credit only includes such that have matured according to their terms and does not include a loan or line of credit that has been accelerated to maturity. Transferring an accelerated loan into an SSBCI program does not promote the purpose of expanding small business access to capital and would primarily benefit lenders rather than small businesses.

VI. SSBCI Eligibility Requirements – Loan

A. Eligible Loan Requirements

1. Maximum loan amount: \$20,000,000.
2. Minimum loan amount: No minimum requirement.
3. Maximum length of the loan: 10 years, with room for negotiation for an extension.
4. Closing Fee: A closing fee equal to 50 basis points (0.5%) of the value of the Initial Deposit.
5. Upfront Fees: Excluding fees to the State, upfront fees may not exceed 2% for loans greater than \$25,000 or \$500 for loans under \$25,000.
6. No prepayment penalty allowed on loans under \$100,000. Loans of \$100,000 or more may include reasonable and customary prepayment fees which must be clearly disclosed to the borrower.
7. Annual Fee: 50 basis points of the cash collateral balance shall be assessed annually (minimum \$50 fee).
 - a. On an annual basis, sixty days before the anniversary of the loan closing, HGIA will remit an invoice for the Annual Fee to the Participating Lender based on the estimated loan balance (determined by an amortization schedule). The Participating Lender will remit payment to HGIA based on actual loan balance and the collateral support percentage still required to support the loan. This payment will include a copy of the loan statement.
8. Maximum cash collateral provided by the State: No more than 20% of the Participating Lender's loan amount or \$1,000,000, whichever is less.
9. Interest Rate: The Participating Lender may charge regular commercial rates, in accordance with the industry regulations, not to exceed the NCUA interest rate cap.
10. The Loan must generally meet Lender's credit underwriting criteria with exception to loan collateral adequacy.
11. Personal guarantees are required from any individual holding 20% or more ownership interest in borrower.
12. Lender must bear a 20% or greater risk of loss.

B. Process and Workflow

- A. **Participating Lender**. Prior to enrolling any loan into the HI-CAP Collateral Program, the Financial
 1. Submit a Participating Lender Application to HGIA and execute a Participating Lender Agreement certifying that:
 - a. It is in good standing with its regulatory body;
 - b. It will comply with all requirements of the HI-CAP Collateral and SSBCI Program;
 - c. It is in compliance with the requirements of 31 C.F.R. § 103.121 (Customer Identification Programs for banks, saving associations, credit unions and certain non-Federally regulated banks); and
 - d. No principal of the Lender has been convicted of a sex offense against a minor.
- B. **HI-CAP Collateral Program Training**. At least one of the Participating Lender's designated employees must attend a "HI-CAP Collateral Program" Orientation & Training or view the recorded training provided by HGIA before performing any work in connection with the HI-CAP Collateral Program. The Participating Lender is responsible for educating its staff on the HI-CAP Collateral Program requirements and procedures.
- C. **Market HI-CAP Collateral Program**. The Participating Lender shall market and promote the HI-CAP Collateral Program as an option to eligible borrowers.
- D. **Collateral Shortfall Identified**. During the course of underwriting loan requests, the Participating Lender identifies a collateral shortfall and determines the amount of cash collateral needed to support the loan.

- E. **SSBCI Eligibility Requirements**. Participating Lender determines if the applicant, loan purpose and loan meets SSBCI eligibility requirements.
- F. **Borrower Application & Certification**. Participating Lender discusses HI-CAP Collateral Program with applicant and obtains assurances from the applicant, by way of the ***Borrower Application & Certification*** (see Appendix C), that the loan is not for impermissible business and loan purposes, the applicant has no conflict of interest, the principal(s)¹² of the applicant have not committed a sex offense against a minor.
- G. **Loan Enrollment**. Participating Lender submits a ***Loan Enrollment Form*** (see Appendix D), which indicates the amount of cash collateral being requested, along with the Participating Lender's credit request and analysis, executed Borrower's Application and Certification Form, and all other required supporting information to HGIA, including but not limited to:
1. HI-CAP Collateral Loan Enrollment form. The lender may request a deposit to a Cash Collateral Account for up to the lesser of twenty percent (20%) of the original principal amount of the loan or \$1.0 million. The lender's potential risk of loss not covered by SSBCI funds shall at minimum be at least twenty percent (20%) of the loan.
 2. HI-CAP Collateral Borrower's Application and Certification form.
 3. Lender Credit Request & Analysis.
 4. Lender's signed and completed Business Loan Application (if available).
 5. Borrower's most recent three year's historical financial statements or tax returns (if a spread and analysis of said statements are not included in the Credit Analysis).
 6. Borrower's most recent two years tax returns from all individuals with 20% or more ownership interest (if a spread and analysis of said statements are not included in the Credit Analysis).
 7. Current personal financial statement from all individuals with 20% or more ownership interest (if a spread and analysis of said statements are not included in the Credit Analysis).
 8. Appraisal or other valuation (as applicable).
 9. Interim financial statement no more than 90 days old.
 10. Business Plan and/or Projections (if required by Lender).
- H. **SSBCI Eligibility**. HGIA will review the request for SSBCI eligibility and notify Participating Lender within five (5) business days. If the loan meets program eligibility requirements:
1. HGIA shall reserve funding for a collateral support deposit to benefit the specific loan for 60 calendar days and provide the Participating Lender with program documents to be executed during loan closing.
 2. Participating Lender to obtain final loan approval, prepare loan documents and close the loan within sixty¹³ (60) calendar days of SSBCI eligibility.
- I. **Cash Collateral Account, Certificate and Agreement of Borrower and Cash Collateral Deposit Agreement**. Upon loan closing, Participating Lender to submit the executed ***Certificate and Agreement of Borrower*** (see Appendix E), and as applicable, the ***Operating Company Agreement*** (see Appendix F), as well as the ***Cash Collateral Deposit Agreement*** (see Appendix G), loan documents and any other documents as may be required to HGIA.
1. HGIA shall open a 1-year Certificate of Deposit (CD) within five (5) business days of receipt of loan and program documents with Participating Lender to support the loan.
For efficiency and administrative convenience, each Cash Collateral Account for Participating Lenders will be established in the name HGIA and maintained at that lender or at another

¹² For purposes of this certification, "principal" is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

¹³ If the Participating Lender is unable to close the loan within the sixty-day timeframe, a request for a 30-day extension should be submitted to HGIA no later than 15 days before the reserved funds are set to expire.

designated insured depository financial institution.

The Cash Collateral Accounts are to be interest bearing, and Participating Lenders may not charge HGIA for any fees related to HI-CAP transactions or for the maintenance of a Cash Collateral Account.

All funds transferred to a Cash Collateral Account will be the property of, and solely controlled by, HGIA. Interest or income earned on the funds will be credited to the account. HGIA is authorized to withdraw at any time from a Cash Collateral Account all interest or income that has been credited to the account. Interest or income withdrawals may be used for any purpose in connection with the HI-CAP Program. The Cash Collateral Account will be reduced proportionately with the principal reduction of the loan, on an annual basis or sooner if the loan is paid off.

2. HGIA will insert the CD account number in the Cash Collateral Deposit Agreement and provide a fully executed copy to the Participating Lender.
- J. **Loan Servicing.** Similar to its existing portfolio of non-SSBCI supported loans, the Participating Lender shall service loans enrolled in the HI-Cap Collateral Program.
1. Upon repayment in full or upon reaching loan maturity, the CD account shall be closed and the cash deposit returned to HGIA.
- K. **Annual Fee.** On an annual basis, HGIA will provide Participating Lender an **Annual Fee Invoice** (see Appendix H) sixty (60) days before the anniversary of the loan closing, based on the estimated loan balance from the loan's amortization schedule.
1. The Participating Lender shall input the following information to the Annual Fee Invoice:
 - a. Actual Loan Balance;
 - b. Amount of Collateral Support % Required
 - c. Status of Loan
 - d. If delinquent, include Last Payment Date; Number of Days Past Due; and Amount Past Due
 - e. If additional financing has been provided to the Borrower, provide the Loan/Line Type; Loan/Line Amount; Loan/Line Balance and Loan/Line Status
 - f. Participating Lender to submit the completed Annual Fee Invoice and a copy of a current loan statement to HGIA, along with a check or ACH payment for the Annual Fee due.
 - g. HGIA will reduce the cash collateral account to maintain the ratio of the Collateral Support percentage to the current loan principal and renew the CD for another one-year term.
- L. **Annual Reports.** By February 15th of each year, the Participating Lender shall submit a completed **Annual Report** (see Appendix I), including but not limited to:
1. Current status of the Loan.
 2. Current outstanding balance.
 3. Any additional financing provided to Borrower since loan closing.
 4. Delinquency information.
- Upon request by the U.S. Treasury, HGIA or HTDC, information from the Participating Lender on enrolled SSBCI-supported loans will be made available.
- M. **Surveys to Borrowers.** On an annual basis, HGIA shall send surveys to Borrowers to obtain updated economic development information on the impact of SSBCI supported loans. Data to include:
1. Number of jobs created or retained.
 2. Business revenue and net income.
 3. Other economic development data, as may be required.

- N. **Default.** As required under the Loan Documents, in the event of default, the Participating 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.
1. After the Participating Lender charges off all or part of an enrolled loan after following its standard collection policies and procedures, including but not limited to seeking judgment and levying against collateral, the Lender may file a claim with HGIA by submitting a completed ***Collateral Support Claim Form*** (see Appendix J) after all of the borrower's collateral and security has been liquidated.
 - a. The Participating Lender will determine when and how much to charge off on said Loan in a manner consistent with its usual and customary method for making such determinations on business loans that are not enrolled in the HI-CAP Collateral Program.
 2. Upon receipt and acceptance by HGIA of a claim filed by the lender, HGIA shall promptly pay the claim as submitted solely from funds in the Cash Collateral Account for that particular loan. Provided, however, that HGIA may reject a claim if the terms of the Participating Lender's Agreement has been violated.
- O. **Collection Rights & Recovery.** If after payment of a claim by HGIA, the Participating Lender recovers from a borrower any amount for which payment of the claim was made, the Participating Lender shall promptly pay to HGIA the pro rata amount recovered.
- P. **Auditor, Compliance Contractor.** To ensure compliance with the terms of the HI-CAP Collateral Support Program and the SSBCI Program, the Participating Lender shall permit the U.S. Treasury, HGIA, HGIA's auditor (the "Auditor"), HGIA and HTDC's Compliance Contractor (the "Compliance Contractor") and any representative, member, employee or agent of the foregoing to inspect the books and records, including financial records and all other information and data relevant to the Loan, the Loan Documents, Deposit Agreement and the terms of the Participating Agreement.

Appendix A – Participating Lender Application



HI-CAP Collateral Support Program Participating Lender Application

Legal Name of Financial Institution: _____ EIN: _____

DBA (if applicable): _____

Headquarters Address: _____ City: _____ ST: ____ Zip: _____

Mailing Address: _____ City: _____ ST: ____ Zip: _____

Type of Institution (must be federally insured; choose all applicable):

- | | |
|--|--|
| <input type="checkbox"/> Non-CDFI Bank | <input type="checkbox"/> Small business investment company |
| <input type="checkbox"/> CDFI Bank | <input type="checkbox"/> CDFI Credit union |
| <input type="checkbox"/> Thrift Bank | <input type="checkbox"/> Non-CDFI Credit Union |
| <input type="checkbox"/> Other _____ | |

Regulatory Agency: _____ Regulatory ID#¹: _____

Insuring Agency: _____ CDFI Certification#²: _____

Combined capital & surplus at most recent fiscal year end: _____ # Lending Branches in HI _____

Please attach a list of your Board of Directors, including name, title, ethnicity, and gender of all members, as well as the same information for your top 3 executives.

Check the correct box if it applies to your financial institution:

- Minority Owned Woman Owned Veteran Owned

By enrolling as a HI-CAP Collateral Participating Lender:

1. The applicant certifies that the applicant Financial Institution is not subject to a cease-and-desist order or other regulatory sanction with the appropriate federal or state regulatory body, which would impair its ability to participate in the Program.

¹ For providers whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC), provide the provider's RSSD ID. For federally insured credit unions, provide the provider's charter number from the National Credit Union Administration (NCUA). If none of the above regulatory IDs apply, but another regulatory ID applies, write "Other" and the number associated with it. If no regulatory ID number applies, respond "None."

² The CDFI Certification number is a federal designation given by the US Treasury Department's CDFI Fund. CDFIs include credit unions, community banks, loan funds, and other specialized organizations that serve low-income and under-served communities. For Community Development Financial Institutions (CDFIs), provide the provider's CDFI certification number.



2. The Financial Institution agrees to follow the Program's procedures as set forth by the Hawai'i Green Infrastructure Authority ("HGIA"), Hawai'i Technology Development Corporation ("HTDC"), the US Department of the Treasury, and in the applicable law and regulations.
3. The Financial Institution agrees to permit an audit of any of its records relating to enrolled loans, and to supply such other information concerning enrolled loans as shall be requested by HGIA and the US Department of the Treasury.
4. The Financial Institution acknowledges that HGIA, HTDC and the State will have no liability to the participating Financial Institution under the Program except from funds deposited in the Cash Collateral Account for the participating Financial Institution.

Contact Information:

The following is the primary contact for the HI-CAP Collateral Support Program:

Primary Contact Person Name: _____ Title: _____

Mailing Address: _____ City: _____ ST: ____ Zip: _____

Office Phone: _____ Cell Phone: _____ Email address: _____

Please provide additional information if you would like to include a secondary contact.

Annual Fee Invoices will be delivered via Email. Please remit the Annual Fee Invoice to (check and complete all that applies):

- Primary Contact identified above
- Centralized Department: _____
Name: _____ Title: _____
Mailing Address: _____ City: _____ ST: ____ Zip: _____
Office Phone: _____ Cell Phone: _____ Email address: _____
- Lender identified on HI-Cap Collateral Loan Enrollment Form
- Other (Name, Title & Contact Info): _____



Required Reports. SSBCI data updates are due on an annual basis. Please request updates from (check and complete all that applies):

- Primary Contact identified above
- Centralized Department: _____
Name: _____ Title: _____
Mailing Address: _____ City: _____ ST: ___ Zip: _____
Office Phone: _____ Cell Phone: _____ Email address: _____
- Lender identified on HI-Cap Collateral Loan Enrollment Form
- Other (Name, Title & Contact Info): _____

Authorized Signers:

Any one of the following will be authorized to sign the Loan Enrollment Form, Cash Collateral Deposit Agreement, Collateral Support Claim Form and other Program related documents on behalf of the Financial Institution (check all that apply):

- Primary Contact identified above
- Centralized Department: _____
Name: _____ Title: _____
Mailing Address: _____ City: _____ ST: ___ Zip: _____
Office Phone: _____ Cell Phone: _____ Email address: _____
- Lender identified on HI-Cap Collateral Loan Enrollment Form
- Other (Name & Title): _____
- Other (Category of Employees): _____

Hawai'i Small Business Capital
Collateral Support Program
("HI-CAP Collateral")
hicap@htdc.org



Hawai'i Green Infrastructure Authority
P.O. Box 2359
Honolulu, HI 96804
dbedt.hicap-loans@hawaii.gov

I/We certify that all of the information included herein and the accompanying documentation is true and correct and that I/we are authorized to sign this Participating Lender's Application form and the Participating Lender Agreement on behalf of the Applicant. I/we consent to any inquiry appropriate and necessary to verify or confirm the information I/we have provided.

Authorized Signer(s):

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

Date: _____

Appendix B – Participating Lender Agreement

STATE SMALL BUSINESS CREDIT INITIATIVE
HI-CAP COLLATERAL SUPPORT PROGRAM
PARTICIPATING LENDER AGREEMENT

This Participating Lender Agreement (this "AGREEMENT") is dated as of _____, but is effective as of _____ (the "EFFECTIVE DATE"), between **HAWAII GREEN INFRASTRUCTURE AUTHORITY**, an instrumentality of the State of Hawaii ("ADMINISTRATOR"), and _____, a _____ ("LENDER") (hereinafter, 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 Loan") 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 Program and HI-CAP Loan 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 Program and HI-CAP Loan 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 parties desire to set forth in this Agreement the terms and conditions of participation in the HI-CAP Collateral Program.

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

Section 1. Program Participation Eligibility

To become a Participating Lender and participate in the HI-CAP Collateral Support Program ("HI-CAP Collateral Program") administered by HGIA, the Lender must be a qualified financial institution, and agree that its activities and offerings will comply with the terms of HI-CAP Collateral Program, which may be amended from time to time, and meet and maintain compliance with the following minimum requirements described in this Agreement.

1. **Qualified Financial Institution.** Lender is a financial institution as defined pursuant to section 412:1-109, Hawaii Revised Statutes, or a private or public lender approved by HGIA.
2. **Insurance Requirements.** Lender meets the State's Workers Compensation Insurance requirements and carries General Liability coverage with limits no less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. Lender shall add HGIA as an additional insured with an endorsement to each of the Contractor's insurance policies. The endorsement shall also provide that HGIA receive thirty (30) days prior written notice of cancellation or material change in policy provision. Proof of insurance coverage shall be submitted with the executed Participating Lender Agreement and updated annually.
3. **Taxpayer Identification Number & Certification.** Lender has a valid Federal Taxpayer

Identification Number and Hawaii State General Excise Tax Number. Lender shall submit a signed IRS Form W-9 “Request for Taxpayer Identification Number & Certification” with the executed Participating Lender Agreement.

Section 2. General Program Participation Requirements

- 1. Orientation & Training.** In addition to reviewing the guidelines and requirements of the HI-CAP Collateral Program, all Lenders whose applications have qualified them for participation in the HI-CAP Collateral Program must attend a mandatory Program Orientation & Training or view the recorded training provided by HGIA before performing any work in connection with the HI-CAP Collateral Program. At least one (but more than one is encouraged) of the Lender’s designated employees must attend or view Program orientation session. The Lender is responsible for educating Lender’s staff concerning the program requirements and procedures.
- 2. Participating Lender Referral Directory.** HGIA will maintain a Participating Lender Directory (“Participating Lender List”) that lists all Lenders participating in the HI-CAP Collateral Program on HGIA’s website.

On an as needed basis, HGIA will update the database by: (a) adding the name(s) of new Lenders participating in HI-CAP Collateral Program since the last update; and (b) deleting Lenders no longer participating in the program. Lender acknowledges and agrees with HGIA that: (i) inclusion on the Participating Lender List is strictly a result of the applicable Lender having satisfied the requirements for becoming a Participating Lender under the Programs; (ii) HGIA does not endorse any particular Lender; and (iii) being listed in the directory does not guarantee a Lender any minimum volume of loans or customers that may be eligible to receive HI-CAP Collateral Program financing.

To remain listed in the directory, Participating Lenders must remain in good standing with all HI-CAP Collateral Program requirements. Lender hereby acknowledges and authorizes HGIA to include Lender on the Participating Lender List maintained on HGIA’s website.

- 3. Promotion of Program Loans.** The Lender will market the availability of Program Loans to Lender’s existing and potential customers, as applicable, through Lender’s normal marketing channels for similar programs.
- 4. Indemnification and Hold Harmless.** HGIA, the State of Hawaii, HTDC, and their respective directors, officers, agents and employees (collectively, the “Indemnified Person(s)”) shall not be liable to the Lender for any reason arising out of or related in any

way to the Loan, the Loan Documents, the HI-CAP Collateral Program Documents or this Participating Lender Agreement. The Lender shall indemnify and hold HGIA, the State of Hawaii, and HTDC and other Indemnified Person harmless against all claims asserted by or on behalf of any individual person, firm or entity (other than an Indemnified Person), arising or resulting from, or in any way connected with, the Loan, Loan Documents, HI-CAP Collateral Program Documents or this Participating Lender Agreement or any act or failure to act by the Lender, including all liabilities, costs and expenses, including reasonable counsel fees, incurred in any action or proceeding brought by reason of any such claim. The Lender shall also indemnify HGIA, HTDC and other Indemnified Person from and against all costs and expenses, including reasonable counsel fees, lawfully incurred in enforcing any obligation of the Lender arising from or under the Loan, Loan Documents, HI-CAP Collateral Program Documents or this Participating Lender Agreement. The Lender 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 HGIA, HTDC or other Indemnified Person, unless the court finds that despite the adjudication of liability, HGIA, HTDC or other Indemnified Person is fairly and reasonably entitled to indemnity for the expenses the court considers proper. HGIA, HTDC and the Lender agree to act cooperatively in the defense of any action brought against HGIA, HTDC or another Indemnified Person to the greatest extent possible. Performance of the Lender's activities contemplated under the HI-CAP Collateral Program Documents or this Participating Lender Agreement is within the sole control of the Lender 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 Lender, its employees, agents or contractors. This Section shall survive termination of the Participating Lender Agreement indefinitely.

5. **Term and Termination.** The term of this Agreement shall commence on the Effective Date and continue in effect until the date HGIA provides Lender with written notice that HI-CAP Collateral Program has been terminated or upon sooner termination as set forth in the paragraph below. Notwithstanding the foregoing, either party may terminate this Agreement at any time prior to the termination of the HI-CAP Collateral Program, with or without cause, upon delivery of thirty (30) days written notice to the other party. Lender acknowledges and agrees that unless otherwise agreed to in writing by HGIA, the termination of this Agreement and Lender's standing as a Participating Lender prior to the

end of the HI-CAP Collateral Program does not release the Lender from any of the duties and responsibilities with respect to Loans enrolled in the HI-CAP Collateral Program that were entered into and which are outstanding as of the date of termination. If the termination relates to one or more, but not all, Programs, this Agreement shall remain in full force and effect with respect to the remaining Programs.

While it is impossible to note every type of violation or unacceptable conduct that could lead to termination, such violations may include:

- Failure to comply with any of the terms and conditions of this Agreement, Deposit Agreement, other HI-CAP Collateral Program documents, processes or SSBCI Capital Program Policy Guidelines;
- Failure to maintain “Regulatory Good Standing” with Lender’s regulatory agency.

If the Lender is in default of any term, condition, or covenant herein, any representation furnished by Lender to HGIA pursuant hereto shall prove to have been incorrect in any material respect, and/or Lender fails to follow HI-CAP Collateral Program procedures as set forth in the guidelines, HGIA may, in HGIA’s sole and absolute discretion, immediately terminate Lender’s status as a Participating Lender by providing Lender with notice of such termination (the “Notice of Termination”). Upon issuance of a Notice of Termination, this Agreement shall immediately be of no force and effect; provided, however, that such termination does not release Lender from any of the duties and responsibilities with respect to HI-CAP Collateral Program Loans entered into and which are outstanding as of the date of termination. In the event of termination, Lender agrees to waive any and all claims for damages, direct or otherwise, arising under any theory of law or equity, against the State, HGIA and their representatives.

6. **Expenses.** The expenses incurred by each party hereto incident to the execution, delivery and performance by each party under this Agreement, unless expressly provided herein, shall be paid for by each party.
7. **Amendment.** This Agreement may be amended at any time and from time to time by one or more writings executed by all parties hereto.
8. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Hawaii.
9. **Counterparts; Facsimile/Pdf Signatures.** This 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

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 Agreement.

10. **Independent Parties.** This Agreement shall not be deemed to constitute the Parties as partners or joint venturers, nor shall any party be deemed to constitute the other party as its agent.
11. **Successors and Assigns.** This Agreement shall be binding on the Parties' successors and assigns provided that this Agreement shall not be assigned by Lender without the prior written consent of HGIA.
12. **Section Headings.** The headings of the sections herein are for convenience and reference only and shall not be considered as defining or limiting in any way the scope or intent of any provision of this Agreement.

Section 3. Program Requirements. As a Participating Lender, the Lender acknowledges and agrees to the following:

1. **Participating Lenders.** Only Participating Lenders may enroll eligible Loans into the HI-CAP Collateral Program.
2. **Lender certifications, attestation and assurances. The Lender certifies, attests and provides assurances that it is and will remain in compliance with all SSBCI program requirements, including but not limited to the following:**
 - a. **Sex Offender Lender Certification.** No principal(s) of the Lender listed above has been convicted of a sex offense against a minor (as such terms are defined in 34 U.S.C. § 20911). For the purposes of this certification, "principal" means the following: if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.
 - b. **Regulatory Good Standing.** The Lender certifies that it is not subject to a cease-and-desist order or other regulatory sanction with the appropriate federal or state

regulatory body. The Lender further agrees to immediately notify HGIA should there be a change in its regulatory standing which could impair its ability to participate in the Program.

- c. **Criminal and Civil Matters.** To the best of Lender's knowledge, neither Lender nor any of its affiliates, subsidiaries, officers, directors and any person who, directly or indirectly, holds a pecuniary interest in the Lender of 20% or more: (i) have any criminal convictions incident to the application for or performance of a state contract or subcontract, and (ii) have any criminal convictions or have been held liable in any civil proceeding that negatively reflects on the person's business integrity, including without limitation, 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.
 - d. **Passive Real Estate Investment Exception.** To the extent the Borrower is a real estate holding company using the proceeds of the Loan to acquire and hold real property and subsequently leasing the real property to an operating company, the Lender represents and warrants the following:
 - i. The Lender will require the Operating Company to be a co-borrower or a guarantor of the Loan, as applicable;
 - ii. The Lender shall require both the Borrower and Operating Company to execute all required certifications, including the Operating Company Certification;
 - iii. The Lender shall require each natural person holding an ownership interest constituting at least twenty percent (20%) of the Borrower and the Operating Company to provide a personal guaranty in favor of the Lender for the Loan;
 - iv. The Lender shall require the Borrower and Operating Company to submit a written lease with a term at least equal to the term of the Loan, including options to renew exercisable solely by the Operating Company; and
 - v. The Lender shall obtain an assurance from the Borrower that the percentage of space the Operating Company occupies, meets SSBCI requirements.
3. **Lender Compliance.** The Lender agrees to comply with all requirements of the HI-CAP Collateral Program Guidelines, the State Small Business Credit Initiative legislation (12

U.S.C. §5701-5710), the American Rescue Plan Act of 2021, the SSBCI Capital Program Policy Guidelines, and any amendments thereto, including but not limited to the following:

a. **Lender Use of Proceeds and Conflict of Interest Certification.** Funds from the State Small Business Credit Initiative (SSBCI) may only be used for certain purposes and in circumstances where the applicable conflict of interest standards are satisfied. The Lender hereby certifies the following to the participating jurisdiction:

- i. SSBCI-supported loan(s) will not be made in order to place under the protection of the HI-CAP Collateral Program prior debt that was not covered under the HI-CAP Collateral Program and that is or was owed by the borrower to the Lender or to an affiliate of the Lender.
- ii. If an SSBCI-supported loan is a refinancing, it will comply with all applicable SSBCI restrictions and requirements in Sections VII.f (Loan Purpose Requirements and Prohibitions – 12 U.S.C. §5704(e)(7)) and VIII.f (Loan Purpose Requirements and Prohibitions – 12 U.S.C. §5705(f)) of the SSBCI Capital Program Policy Guidelines regarding refinancing and new extensions of credit.
- iii. The Lender will not attempt to enroll any portion of an SBA-guaranteed loan.
- iv. The SSBCI-supported loan shall comply with all applicable SSBCI restrictions and requirements within the SSBCI Capital Program Policy Guidelines, as may be amended, including the submission of the completed and executed Borrower Application and Certification Form, executed Cash Collateral Deposit Agreement, executed Certificate and Agreement of Borrower, and other Program documents and information as may be required.

b. **Auditor, Compliance Contractor, etc.** To ensure compliance with the terms of the HI-CAP Collateral Support Program and the SSBCI Program:

- i. the Lender shall permit HGIA's Auditor (the "Auditor"), HGIA, HTDC, and the Compliance Contractor (the "Compliance Contractor"), and any representative, member, employee or agent of the foregoing to inspect the books and records, including financial records and all other information and data, relevant to the Loan, the Loan Documents, Deposit Agreement and the terms of this Agreement;

- ii. the Lender shall permit the Auditor, HGIA, HTDC, Compliance Contractor, and any representative, member, employee or agent of the foregoing to make copies or extracts from information and to discuss the affairs, finances and accounts of the Lender and Borrower related to the Loan, the Loan Documents, Deposit Agreement and this Agreement; and
- iii. the Lender shall cooperate with the HGIA and its compliance team, if contacted.

This Section shall survive for a period of three years from the effective date of termination of the Agreement.

- c. **Jurisdiction.** The Lender agrees that it shall make a good faith effort to resolve any controversies that arise regarding the HI-CAP Collateral Program Documents, the Deposit Agreements and/or this Agreement. If a controversy cannot be resolved, the Lender agree that any legal actions concerning the HI-CAP Collateral Program Documents, the Deposit Agreements and/or this Agreement shall be brought in the State of Hawaii Circuit Court of the First Circuit. This Section shall survive termination of the Agreement indefinitely.
- d. **Non-Discrimination and Unfair Labor Practices.** In connection with this Agreement, the Lender agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. The Lender further agrees that every subcontract entered into for performance of this Agreement will contain a provision requiring nondiscrimination in employment, as specified in this Agreement, binding upon each subcontractor.

At all times during the term of this Agreement, the Lender also agrees that it shall comply with all applicable federal and state labor and employment laws and regulations, and that every subcontract entered into for performance of this Agreement will contain a provision, binding on the subcontractor, requiring such compliance.

- e. **Patriot Act.** The Lender shall perform all of its obligations and duties as required under the Patriot Act of 2001, as amended, including without limitation, the provisions relating to the Customer Identification Program (CIP) and anti-terrorism,

and HGIA may so rely on the Lender's performance of any such requirements, including that the Lender is in compliance with the requirements of 31 CFR 103.121 (relative to anti-money laundering programs); and Lender acknowledges the aforesaid obligations and duties, and further certifies it is in compliance thereunder, including relative to implementation of reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify a person's identity and determine whether the person appears on any lists of known or suspected terrorist organizations provided to the Lender by any government agency.

- f. **Creditworthiness of Loan.** The Loan must generally meet the Lender's credit underwriting criteria with an exception to loan collateral adequacy.
- g. **Headquartered in Hawaii.** At least 90% of the SSBCI funds allocated must support businesses headquartered in Hawaii.
- h. **Borrower Size.** HI-CAP Collateral Program is targeting businesses with an average of 500 employees or less. The Lender shall not enroll Loans into the HI-CAP Collateral Program to support any Borrower that has more than 750 employees.
- i. **Purpose of the Loan.** Loans enrolled into the HI-CAP Collateral Program:
 - i. Shall be only for permissible purposes.
 - ii. Will not be for SSBCI impermissible purposes
- j. **Maximum Loan Amount** shall not exceed a principal amount of \$20 million. Additionally, the maximum aggregate outstanding loan amount(s) that may be enrolled for any single borrower is \$20.0 million.
- k. **Maximum Loan Term:** Ten (10) Years.
- l. **Interest Rate** shall be the Lender's standard commercial rates, not to exceed the National Credit Union Administration's ("NCUA") interest rate cap.
- m. **Upfront Fees or charges** paid by the small business, excluding fees to the state program, may not exceed 2% for loans greater than \$25,000 or \$500 for loans under \$25,000.
- n. **Personal Guarantees** are required from any individual holding 20% or more ownership interest in the Borrower.
- o. **Lender Risk.** Lender must bear a 20% or greater risk of loss.

- p. **Fees.** The Lender agrees to pay HGIA a Closing Fee equal to the greater of 50 basis points (0.5%) of the value of the initial cash deposited into the Lender's Cash Collateral Account ("Initial Deposit") or \$50.00. Thereafter, on an annual basis, the Lender agrees to pay HGIA an Annual Fee equal to the greater of 50 basis points (0.5%) of the actual Term Loan Collateral Requirement, Revolving Loan Collateral Requirement or Draw to Term Loan Collateral Requirement, as applicable under Section 3 of the Cash Collateral Deposit Agreement multiplied by the Collateral Support Percentage required by the Lender to support the Loan or \$50.00.
- q. **SSBCI Reporting.** The Lender shall cooperate with HGIA, HTDC, and any of their representatives, to provide information necessary for HGIA to ensure effective administration and reporting of the program to the U.S. Treasury, on a bi-annual basis or upon request, including but not limited to the following:
- i. Borrower's Loan Number;
 - ii. Date of Initial Loan Disbursement;
 - iii. Loan Status;
 - iv. Current Outstanding Loan Principal Balance;
 - v. Current Outstanding Original State Participation Balance;
 - vi. Additional Financing Provided to Borrower at closing or subsequent to closing;
 - vii. Delinquent Loan Data;
 - viii. Charge-off Data;
 - ix. any other information from time to time requested by HGIA or the US Treasury.

Section 4. Notices.

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other party, or whenever any of the parties desires to give or serve upon any other party any communication with respect to this Agreement or any of the HI-CAP Collateral Program Documents, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing, delivered via electronic mail, as follows:

If to the Administrator:

Hawaii Green Infrastructure Authority
Dbedt.hicap-loans@hawaii.gov

If to the Lender:

- 1. For General Program Updates: _____

- 2. For Annual Fee Invoices: _____

- 3. For Report Data: _____

4. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any Person (other than the Administrator or Lender) designated above to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

Any party may designate a different address by giving notice thereof in accordance with this paragraph. Notice shall be deemed completed on the date of delivery, email or two (2) business days after the date of mailing, as applicable.

Section 5. Authorized Signer(s).

To expedite the submission of the required HI-CAP Collateral Program documents, the Lender may authorize specific employees to sign on its behalf. The Lender hereby authorizes the following employees to sign HI-CAP Collateral Program Documents on behalf of the Lender:

| | | |
|--------------|----------------------|---------|
| _____ | _____ | _____ |
| (Print Name) | (Specimen Signature) | (Title) |
| _____ | _____ | _____ |
| (Print Name) | (Specimen Signature) | (Title) |
| _____ | _____ | _____ |
| (Print Name) | (Specimen Signature) | (Title) |

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as by their respective authorized officers or representatives as of the date and year first above written.

HAWAII GREEN INFRASTRUCTURE
AUTHORITY, an instrumentality of
the State of Hawaii

a _____

By: _____
Gwen S Yamamoto Lau
Its: Executive Director

By: _____
Name: _____
Its: _____

SAMPLE

Appendix C – Borrower Application & Certification



HI-CAP Collateral Support Program Borrower Application & Certification

Legal Business Name ("Applicant"): _____ EIN: _____

DBA (if applicable): _____ Date Established: _____

Headquarters Address: _____ City: _____ ST: _____ Zip: _____

Mailing Address: _____ City: _____ ST: _____ Zip: _____

Email: _____ Phone: _____ Website: _____

Primary Contact Person Name: _____ Title: _____

Mailing Address: _____ City: _____ ST: _____ Zip: _____

Office Phone: _____ Cell Phone: _____ Email address: _____

NAICS Code: _____ Hawaii Tax I.D. Number: _____

- Type of Entity: (check one):
- | | | |
|---|--|--|
| <input type="checkbox"/> Proprietorship | <input type="checkbox"/> Partnership/LLP | <input type="checkbox"/> Limited Liability Company |
| <input type="checkbox"/> C-Corporation | <input type="checkbox"/> S-Corporation | <input type="checkbox"/> Joint Venture |
| <input type="checkbox"/> Nonprofit | <input type="checkbox"/> Other: _____ | |

List all partners and owners who have 20% or greater ownership, as well as officers, directors and key employees (regardless of ownership):

| | | | |
|--|--|------------------------|---|
| Name (first, middle, last) | Date of Birth | Title | % Ownership % |
| Residence Address (street address, city, state, zip) | <input type="checkbox"/> Own <input type="checkbox"/> Rent | Social Security Number | Trust Account <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Name | Date of Birth | Title | % Ownership % |
| Residence Address (street address, city, state, zip) | <input type="checkbox"/> Own <input type="checkbox"/> Rent | Social Security Number | Trust Account <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Name | Date of Birth | Title | % Ownership % |
| Residence Address (street address, city, state, zip) | <input type="checkbox"/> Own <input type="checkbox"/> Rent | Social Security Number | Trust Account <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Name (first, middle, last) | Date of Birth | Title | % Ownership % |
| Residence Address (street address, city, state, zip) | <input type="checkbox"/> Own <input type="checkbox"/> Rent | Social Security Number | Trust Account <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Name (first, middle, last) | Date of Birth | Title | % Ownership % |
| Residence Address (street address, city, state, zip) | <input type="checkbox"/> Own <input type="checkbox"/> Rent | Social Security Number | Trust Account <input type="checkbox"/> Yes <input type="checkbox"/> No |

Affiliate Businesses List any other business owned by any principal with 20% or more ownership in the operating company.

| | | |
|---------------|-------|------------------|
| Business Name | Owner | % Ownership % |
| Business Name | Owner | % Ownership % |



| Business Information | | | |
|---|---|---------------------------------------|----------------------------|
| Primary business activity (e.g., Retail, Manufacturing, etc.): | | | |
| Gross Revenue, Last Fiscal Year: | Net Income, Last Fiscal Year: | Gross Revenue, Current Year: | |
| Current Number of Full-Time ¹ Employees: | Current Number of Part-Time ² Employees: | Current Number of Seasonal Employees: | |
| With the SSBCI supported loan, please estimate the following information: | | | |
| # Full-Time Jobs Created in 2 Yrs: | # Full-Time Jobs Retained: | # Part-Time Jobs Created in 2 Yrs: | # Part-Time Jobs Retained: |

| Previous and Current Government (Local, State, Federal) Debt | | | | | |
|--|-----------------|---------------|-----------------|---------------------|---|
| Agency Name | Original Amount | Original Date | Current Balance | Collateral/Security | Loan Status (Current, Paid in Full, Delinquent, Charged Off) |
| | \$ | | \$ | | |
| | \$ | | \$ | | |

Are you currently receiving funding from other public (State or Other), or Government sources invested at the same time and for the same purpose as the SSBCI-supported loan? Yes No

If "Yes": What is the dollar amount you are receiving? _____
What program/entity are you receiving funding from? _____

Certifications, Attestations and Assurances.

Sex Offender Certification. Under the State Small Business Credit Initiative (SSBCI), Applicants must certify that their principals have not been convicted of a sex offense against a minor. By signing this application, the Applicant hereby certifies that no principal of the Applicant listed above has been convicted of a sex offense against a minor (as such terms are defined in 34 U.S.C. § 20911). For the purposes of this certification, "principal" is defined as "if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, or other entity, each director, each of the five most highly compensated executives or officers or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.

Use of Proceeds and Conflict of Interest Certification. Funds from the State Small Business Credit Initiative (SSBCI) may only be used for certain purposes and in circumstances where the applicable conflict of interest standards are satisfied. The Applicant hereby certifies the following to the Lender and HGIA:

1. The loan proceeds will be used for a "business purpose." A business purpose includes, but is not limited to, start-up costs; working capital; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term "business purpose" excludes acquiring or holding passive investments in real estate; the purchase of securities except as permitted in certification 2.d below; and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended (2 U.S.C. § 1602(7)).
2. The loan proceeds will not be used to:
 - a. for any impermissible purpose under the SSBCI Capital Program Policy Guidelines, as may be amended, including without limitation any impermissible purposes set forth in Sections VII.f & VIII.f and 12 U.S. Code § 5704;

¹ Full-time is more than 2,000 hours per year.

² Part-time is less than 2,000 hours per year.



- b. to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or Local Government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or Local Government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. §1352;
 - c. to repay delinquent federal or jurisdiction income taxes unless the Applicant has a payment plan in place with the relevant taxing authority;
 - d. to repay taxes held in trust or escrow (e.g., payroll or sales taxes);
 - e. to reimburse funds owed to any owner, including any equity investment or investment of capital for the business's continuance; or
 - f. to purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.
3. The Applicant is not:
- a. a business engaged in speculative activities that profit from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade³;
 - b. a business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;
 - c. 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;
 - d. a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in Small Business Administration (SBA) Standard Operating Procedure (SOP) 50 10 6⁴; or
 - e. a business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business.
4. The Applicant is not:
- a. an executive officer, director, or principal shareholder of the lender;
 - b. a member of the immediate family of an executive officer, director, or principal shareholder of the lender; or
 - c. a related interest or immediate family member of such an executive officer, director, or principal shareholder of the lender.

For the purposes of the above conflict of interest certification, the terms "executive officer," "director," "principal shareholder," "immediate family," and "related interest" refer to the same relationship to the lender as the relationships described in 12 C.F.R. part 215.

Business Enterprise Owned and Controlled by Socially and Economically Disadvantaged Individuals ("SEDI-Owned Businesses")

The proposed transaction may be supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively known as participating jurisdictions). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. SSBCI

³ A construction loan permitted under the guidance on passive real estate investment in the SSBCI Capital Program Policy Guidelines will not be considered a speculative business for purposes of SSBCI.

⁴ See chapter 3.A.8.b of SBA SOP 50 10 6 (effective October 1, 2020), which specifies the following with respect to marijuana-related businesses: "Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance."



provides funding for participating jurisdictions to support businesses owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses)⁵. This certification may provide documentation that an SSBCI loan supported a SEDI-owned business. The information collected from this certification can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable antidiscrimination laws, including, but not limited to, the laws specified in Section IX.b of the Capital Program Policy Guidelines (Compliance with Civil Rights Requirements).

The Applicant is not required to provide this certification. The Applicant may identify all categories in groups (1) through (3) below that apply, including all subcategories in group (1) that apply.

The Applicant hereby certifies to the Lender and HGIA that it is a:

1. Business enterprise that is owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their (check all that applies):

| | |
|---|---|
| <input type="checkbox"/> membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society | <input type="checkbox"/> long-term residence in an environment isolated from the mainstream of American society |
| <input type="checkbox"/> gender | <input type="checkbox"/> veteran status |
| <input type="checkbox"/> limited English proficiency | <input type="checkbox"/> disability |
| <input type="checkbox"/> membership of a federally or state-recognized Indian Tribe | <input type="checkbox"/> residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization) |
| <input type="checkbox"/> long-term residence in a rural community | <input type="checkbox"/> residence in a U.S. territory |
| <input type="checkbox"/> membership of another underserved community ⁶ | |

2. Business enterprise that is owned and controlled by individuals whose **residences** are in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii)⁷. To find out if your residence is in a CDFI Investment Area, click on the link provided and follow the instructions under "CDFI INVESTMENT AREAS BY ADDRESS":

<https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas>

Address in CDFI Investment Area: _____

3. Business enterprise that will build, open, or operate a location in a CDFI Investment Area, as defined in 12 C.F.R. § 1805.201(b)(3)(ii)⁷. To find out if your business is in a CDFI Investment Area, click on the link provided and follow the instructions under "CDFI INVESTMENT AREAS BY ADDRESS": <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas>

Address in CDFI Investment Area: _____

⁵ SSBCI funds count toward fulfilling the "expended for" requirement for the \$1.5 billion SEDI allocation and toward qualifying for initial eligible amounts under the \$1.0 billion SEDI incentive allocation if the SSBCI funds have been expended for loans, investments, or other credit or equity support to any of the four groups of businesses set forth in Section IV.a of the SSBCI Capital Program Policy Guidelines. While a participating jurisdiction may reasonably identify group (2) and (3) businesses (i.e., those located in Community Development Financial Institution (CDFI) Investment Areas) based on residence or businesses' addresses from the relevant loan, investment, and credit or equity support applications, certification is required with regard to groups (1) through (3).

⁶ "Underserved communities" are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of equity. Equity is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

⁷ Treasury has provided a mapping tool for the borrower or investee to use to identify whether the relevant address is in a CDFI Investment Area at <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas>. For each calendar year, Treasury will use the list of CDFI Investment Areas identified by the CDFI Fund as of January 1 of the calendar year. If the CDFI Fund's list is updated during that calendar year, the new list will not be adopted for purposes of SSBCI until the next calendar year, thus providing advance notice to jurisdictions.



SSBCI Data. The purpose of collecting this information is to help ensure that all applicants are treated fairly and that the needs of small businesses are being fulfilled. Federal law requires that we ask Applicants for their demographic information. You are not required to provide this information, but are encouraged to do so. Providing this information could help the State draw down additional federal funds for this program. You may select one or more designations for "Ethnicity" and one or more designations for "Race." The law provides that we may not discriminate on the basis of this information, or on whether you choose to provide it. The law also provides that we may not discriminate on the basis of age or marital status information you provide in this application.

1. Indicate yes or no for the following:

- a. Minority-owned or controlled⁸ business: Yes No Prefer not to respond
- b. Women-owned or controlled⁸ business: Yes No Prefer not to respond
- c. Veteran-owned or controlled⁸ business: Yes No Prefer not to respond

2. For each principal owner of the business, please indicate one or more race categories with which the principal owner identifies (attach additional sheets as may be required):

| | | | |
|--|--|--|-----------------------------------|
| <input type="checkbox"/> Asian Indian | <input type="checkbox"/> Vietnamese | <input type="checkbox"/> Chinese | <input type="checkbox"/> Filipino |
| <input type="checkbox"/> Japanese | <input type="checkbox"/> Korean | <input type="checkbox"/> Samoan | |
| <input type="checkbox"/> Black or African American | <input type="checkbox"/> Guamanian or Chamorro | <input type="checkbox"/> Native Hawaiian | |
| <input type="checkbox"/> American Indian | <input type="checkbox"/> Alaska Native | <input type="checkbox"/> Asian (Other) _____ | |
| <input type="checkbox"/> Pacific Islander | <input type="checkbox"/> White | <input type="checkbox"/> Prefer not to respond | |

3. For each principal owner of the business, indicate which of the following ethnicity categories the principal owner identifies with:

| | | |
|---|---|--|
| <input type="checkbox"/> Hispanic or Latino/a | <input type="checkbox"/> Not Hispanic or Latino/a | <input type="checkbox"/> Prefer not to respond |
|---|---|--|

4. For each principal owner of the business, indicate which of the following ethnicity categories the principal owner identifies with:

| | | |
|--|--|--|
| <input type="checkbox"/> Middle Eastern or North African | <input type="checkbox"/> Not Middle Eastern or North African | <input type="checkbox"/> Prefer not to respond |
|--|--|--|

5. For each principal owner of the business, indicate which one of the following gender categories the principal owner identifies with:

| | | |
|---|-------------------------------|--|
| <input type="checkbox"/> Female | <input type="checkbox"/> Male | <input type="checkbox"/> Nonbinary |
| <input type="checkbox"/> Prefer to self-describe: | | <input type="checkbox"/> Prefer not to respond |

6. For each principal owner of the business, indicate which one of the following sexual orientation categories the principal owner identifies with:

| | | |
|--|-----------------------------------|--|
| <input type="checkbox"/> Gay or lesbian | <input type="checkbox"/> Bisexual | <input type="checkbox"/> Prefer not to respond |
| <input type="checkbox"/> Straight, that is not gay, lesbian, or bisexual | | <input type="checkbox"/> Something else: |

Disclosure and Agreement Regarding HI-CAP Collateral Program Application

Please read this Disclosure and Agreement carefully. In signing this HI-CAP Collateral Program Application, you acknowledge that you have read, understand and agree to be bound by the provisions set forth herein.

INDEMNIFICATION

You will indemnify, defend and hold HGIA, HTDC, and its officers, directors, employees and agents harmless from any and all liability or any loss, damage, or injury (including, without limitation, attorney's fees incurred with attorneys of HGIA's

⁸ The term "owned and controlled" means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community of which the institution services is predominantly comprised of such individuals.



choice) arising out of or resulting from (i) any misstatement or misrepresentation in or omission from the information provided by Applicant or parties related to Applicant in this HI-CAP Collateral Program Application or any other documents provided pursuant to this Application, (ii) any acts or omissions of Applicant or parties related to Applicant in connection with this Application, (iii) failure by Applicant to receive a loan from a Participating Lender; and/or (iv) any loss, damage, or liability to Applicant or Applicant's business.

NO REPRESENTATIONS

The funding of the loan from a Participating Lender is subject to the Participating Lender's approval of your Application and is also subject to your satisfactory compliance with the terms set forth in the Participating Lender's Commitment Letter or Term Sheet, and all other applicable conditions.

By signing this HI-CAP Collateral Program Application, you acknowledge that:

- a. HGIA is not your agent or representative;
- b. HGIA has made no representations to you that a loan will be approved in relation to your application; and
- c. There is no representation or guaranty of HI-CAP Collateral Program funds being available if your loan funding is delayed for more than sixty days after HGIA determines your loan to be eligible for the HI-CAP Collateral Program.

SHARING NON-PUBLIC INFORMATION

My signature authorizes and grants HGIA unrestricted permission to share the information provided on this application and information submitted in connection with applying for the HI-CAP Collateral Program with third parties, including but not limited to your Participating Lenders, HGIA's staff and Board, HTDC's staff and Board, the State of Hawai'i and the U.S. Treasury.

The State is required according to section 92F-12(a)(8) of the Hawaii Revised Statutes to collect and make available upon request "the name, address and occupation of any person borrowing funds from a state or county loan program and the amount, purpose, and current status of the loan."

MARKETING

The undersigned hereby authorizes HGIA and the U.S. Treasury to use the business and the undersigned's name in SSBCI Program related promotional materials only.

The Applicant hereby certifies that all the above information is true and accurate to the best of his or her knowledge, and further covenants that it shall deliver prompt notice to Lender and the State of any inaccuracies that it discovers.

All principals that hold 20% or more ownership of the Applicant must sign this Application and Certification, including a separate Business Enterprise Owned and Controlled by Socially and Economically Disadvantaged Individuals Disclosure.

Borrower or Certifying Entity Legal Business Name: _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Date: _____





**Business Enterprise Owned and Controlled by
Socially and Economically Disadvantaged Individuals Disclosure**

Please submit for all partners and owners who have 20% or greater ownership, as well as officers, directors and key employees (regardless of ownership). Make additional copies, as required.

Legal Business Name ("Applicant"): _____

Name of Owner (with 20% or greater ownership interest): _____

Business Enterprise Owned and Controlled by Socially and Economically Disadvantaged Individuals ("SEDI-Owned Businesses").

The proposed transaction may be supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively known as participating jurisdictions). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. SSBCI provides funding for participating jurisdictions to support businesses owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses)⁹. This certification may provide documentation that an SSBCI loan supported a SEDI-owned business. The information collected from this certification can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable antidiscrimination laws, including, but not limited to, the laws specified in Section IX.b of the Capital Program Policy Guidelines (Compliance with Civil Rights Requirements).

I understand that I am not required to provide this certification. I may identify all categories in groups that apply, including all subcategories that apply.

The Applicant hereby certifies to the Lender and HGIA that it is a:

- Business enterprise that is owned and controlled by individuals whose **residences** are in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii)¹⁰. To find out if your residence is in a CDFI Investment Area, click on the link provided and follow the instructions under "CDFI INVESTMENT AREAS BY ADDRESS": <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas>
Address in CDFI Investment Area: _____

SSBCI Data. The purpose of collecting this information is to help ensure that all applicants are treated fairly and that the needs of small businesses are being fulfilled. Federal law requires that we ask Applicants for their demographic information. You are not required to provide this information, but are encouraged to do so. Providing this information could help the State draw down additional federal funds for this program. You may select one or more designations for "Ethnicity" and one or more designations for "Race." The law provides that we may not discriminate on the basis of this information, or on whether you choose to provide it. The law also provides that we may not discriminate on the basis of age or marital status information you provide in this application.

⁹ SSBCI funds count toward fulfilling the "expended for" requirement for the \$1.5 billion SEDI allocation and toward qualifying for initial eligible amounts under the \$1.0 billion SEDI incentive allocation if the SSBCI funds have been expended for loans, investments, or other credit or equity support to any of the four groups of businesses set forth in Section IV.a of the SSBCI Capital Program Policy Guidelines. While a participating jurisdiction may reasonably identify group (2) and (3) businesses (i.e., those located in Community Development Financial Institution (CDFI) Investment Areas) based on residence or businesses' addresses from the relevant loan, investment, and credit or equity support applications, certification is required with regard to groups (1) through (3).

¹⁰ Treasury has provided a mapping tool for the borrower or investee to use to identify whether the relevant address is in a CDFI Investment Area at <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas>. For each calendar year, Treasury will use the list of CDFI Investment Areas identified by the CDFI Fund as of January 1 of the calendar year. If the CDFI Fund's list is updated during that calendar year, the new list will not be adopted for purposes of SSBCI until the next calendar year, thus providing advance notice to jurisdictions.



1. For each principal owner of the business, please indicate one or more race categories with which the principal owner identifies (attach additional sheets as may be required):

| | | | |
|--|--|--|-----------------------------------|
| <input type="checkbox"/> Asian Indian | <input type="checkbox"/> Vietnamese | <input type="checkbox"/> Chinese | <input type="checkbox"/> Filipino |
| <input type="checkbox"/> Japanese | <input type="checkbox"/> Korean | <input type="checkbox"/> Samoan | |
| <input type="checkbox"/> Black or African American | <input type="checkbox"/> Guamanian or Chamorro | <input type="checkbox"/> Native Hawaiian | |
| <input type="checkbox"/> American Indian | <input type="checkbox"/> Alaska Native | <input type="checkbox"/> Asian (Other) _____ | |
| <input type="checkbox"/> Pacific Islander | <input type="checkbox"/> White | <input type="checkbox"/> Prefer not to respond | |

2. For each principal owner of the business, indicate which of the following ethnicity categories the principal owner identifies with:

| | | |
|---|---|--|
| <input type="checkbox"/> Hispanic or Latino/a | <input type="checkbox"/> Not Hispanic or Latino/a | <input type="checkbox"/> Prefer not to respond |
|---|---|--|

3. For each principal owner of the business, indicate which of the following ethnicity categories the principal owner identifies with:

| | | |
|--|--|--|
| <input type="checkbox"/> Middle Eastern or North African | <input type="checkbox"/> Not Middle Eastern or North African | <input type="checkbox"/> Prefer not to respond |
|--|--|--|

4. For each principal owner of the business, indicate which one of the following gender categories the principal owner identifies with:

| | | |
|---|-------------------------------|--|
| <input type="checkbox"/> Female | <input type="checkbox"/> Male | <input type="checkbox"/> Nonbinary |
| <input type="checkbox"/> Prefer to self-describe: | | <input type="checkbox"/> Prefer not to respond |

5. For each principal owner of the business, indicate which one of the following sexual orientation categories the principal owner identifies with:

| | | |
|--|--|--|
| <input type="checkbox"/> Gay or lesbian | <input type="checkbox"/> Bisexual | <input type="checkbox"/> Prefer not to respond |
| <input type="checkbox"/> Straight, that is not gay, lesbian, or bisexual | <input type="checkbox"/> Something else: | |

The Applicant hereby certifies that all the above information is true and accurate to the best of his or her knowledge, and further covenants that it shall deliver prompt notice to Lender and the State of any inaccuracies that it discovers.

By: _____
Name: _____
Its: _____

Appendix D – Loan Enrollment Form



HI-CAP Collateral Support Program Loan Enrollment Form

Lender Information

Name of Financial Institution: _____

Branch Name (if applicable): _____

Branch Address: _____

Contact Person: _____ Telephone: _____

Email: _____ Cell Phone: _____

Application Checklist Please submit the following documents with this Loan Enrollment Form. Subject loan must not close or fund prior to execution of the Cash Collateral Deposit Agreement.

| | |
|---|--|
| <input type="checkbox"/> Lender Credit Request & Analysis | <input type="checkbox"/> Signed and completed HI-CAP Collateral Borrower Application & Certification form |
| <input type="checkbox"/> Most recent three years' historical financial statements or tax returns (if a spread and analysis of said statements are not included in the Credit Analysis) | <input type="checkbox"/> Lender's signed and completed Borrower's Application (if available) |
| <input type="checkbox"/> Most recent two years tax returns from all individuals with 20% or more ownership interest (if a spread and analysis of said tax returns are not included in the Credit Analysis) | <input type="checkbox"/> Appraisal or other valuation (as applicable) |
| <input type="checkbox"/> Current personal financial statement from all individuals with 20% or more ownership interest (if a spread and analysis of said tax returns are not included in the Credit Analysis) | <input type="checkbox"/> Interim financial statement no more than 90 days old, if available |
| <input type="checkbox"/> Business Plan and/or Projections (if required by Lender) | |

Borrower Information

Legal Name of Borrower: _____

Trade/DBA Name of Borrower: _____

Operating Entity (if different from Borrower): _____

Physical Address of Business where money will be used (Street Address, City, State, Zip Code):

Primary Business Activity: _____

| Loan Number | Type of Facility (Loan, Line, Construction Loan) | Loan/Line Amount | Initial Interest Rate | Term (Year(s)) | Lien Position |
|-------------|--|------------------|-----------------------|----------------|---------------|
| | | \$ | % | | |

Cash Collateral Requested: \$ _____ Collateral Support Percentage: _____%

Description of collateral supporting credit (if not identified in the Lender's Request & Analysis): _____



Is this loan enrolled in any other government programs or using government funds? No
 Yes If Yes, what program/entity are you receiving funding from? _____

Refinancing Existing Debt (Complete only if refinancing existing debt)

| | |
|--|---|
| Existing Debt from Lender: <input type="checkbox"/> Yes <input type="checkbox"/> No | If another Financial Institution Debt, name of Financial Institution: |
| Type of Existing Debt: | Existing Loan Number: |
| Balance on Existing Loan: \$ | Amount of New Loan Funds: \$ |
| Interest Rate on Existing Loan: % | Total New Loan Amount: \$ |
| Interest Rate on New Loan: % | |

Other Credit As applicable, amount of other credit facilities being provided in combination with the proposed HI-CAP Collateral supported Loan: \$

Loan Type: Line of Credit Term Loan Other

Authorization

The following signature serves as initial representation that this loan meets all requirements as set forth in the Participating Lender's Agreement, the Participating Lender's Guide and the Collateral Deposit Agreement.

Additional Comments:

Lender Signature: _____

Name: _____

Its: _____

Date: _____

Submit completed Loan Enrollment Form and additional information required in the Application Checklist to dbedt.hicap-loans@hawaii.gov

| For HI-CAP Collateral Team Use ONLY | |
|-------------------------------------|--|
| CSP # | |
| Application # | |
| Date Received | |

Appendix E – Certificate and Agreement of Borrower

STATE SMALL BUSINESS CREDIT INITIATIVE
HI-CAP COLLATERAL SUPPORT PROGRAM
CERTIFICATE AND AGREEMENT OF BORROWER
BETWEEN
LENDER AND BORROWER

In consideration of the making of the Term Loan, Revolving Loan or Draw to Term Loan (the "Loan") by _____ (the "Lender") to _____, a _____ (the "Borrower") for \$_____ under the Hawaii Small Business Capital Collateral Support Program ("HI-CAP COLLATERAL") within the State Small Business Credit Initiative Program ("SSBCI") of the U.S. Department of the Treasury ("Treasury") administered by the Hawaii Green Infrastructure Authority ("HGIA") for the State of Hawaii, the Borrower is giving this certificate and making the covenants and agreements herein ("Certificate and Agreement"). The undersigned has the requisite authority and power to sign below on behalf of the Borrower, and Borrower has reviewed, acknowledges, consents to, accepts and affirms all of the terms and conditions set forth by the Lender in its Loan documents between Borrower and Lender, and in this Certificate and Agreement.

The Borrower desires the Loan from the Lender and acknowledges that the Lender requires the pledge by HGIA of cash collateral under the HI-CAP Collateral Program to support said Loan. The initial deposit ("Initial Deposit") shall be in the amount of \$_____ (the Initial Deposit, and reductions thereto per terms of the HI-CAP Collateral Program, collectively, the "Cash Collateral").

The Lender has disclosed to the Borrower and any co-maker, guarantor, endorser, other debtor or obligor of the Loan, of the existence of the Cash Collateral 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.

The Borrower understands that 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 Borrower's representations in this Certificate and Agreement, 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; or (v) effectuate any of the circumstances in Sections(i), (ii), (iii) or (iv) above.

The Borrower certifies, attest and makes the following representations, warranties and covenants that it is and will remain in compliance with all SSBCI program requirements, including but not limited to the following:

- 1. Sex Offender Certification.** No principal of the Borrower listed above has been convicted of a sex offense against a minor (as such terms are defined in 34 U. S. C. § 20911). For the purposes of this certification, "principal" is defined as "if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership;

and if a corporation, limited liability company, association or a development company, or other entity, each director, each of the five most highly compensated executives or officers or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.

2. **Business Purpose.** The Loan is an Eligible Loan under the HI-CAP Collateral Program and the SSBCI Capital Program Policy Guidelines, as may be amended. Further, the Loan proceeds will be used for a "business purpose." A business purpose includes, but is not limited to, start up costs, working capital, franchise fees, acquisition of equipment, inventory, or services used in the production, manufacturing or delivery of business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term "business purpose" excludes acquiring or holding passive investments in real estate, the purchase of securities, except as permitted in Section 3.f. below; and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended (2 U.S.C. §1602(7))).
3. **Prohibited Use of Loan.** The loan proceeds will not be used:
 - a. for any impermissible purpose under the SSBCI Capital Program Policy Guidelines, as may be amended, including without limitation any impermissible purposes set forth in Sections VII.f & VIII.f and 12 U.S. Code § 5704;
 - b. to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or Local Government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or Local Government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. §1352;
 - c. to repay delinquent Federal or State income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
 - d. to repay taxes held in trust or escrow (e.g. payroll or sales taxes);
 - e. to reimburse funds owed to any owner, including any equity investment or investment of capital for the business' continuance; or
 - f. to purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.
4. **Borrower Affiliations.** The Borrower is not:
 - a. an executive officer, director, or principal shareholder of the Lender;
 - b. a member of the immediate family of an executive officer, director, or principal shareholder of the Lender; or
 - c. a related interest or immediate family member of such an executive officer, director, or principal shareholder of the Lender.

For the purposes of the above three borrower affiliation restrictions, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to the Lender as the relationships described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

5. **Borrower Business.** The Borrower is not:
 - a. a business engaged in speculative activities that profit from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or

- through the normal course of trade¹;
- b. a business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;
 - c. 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;
 - d. a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in Small Business Administration (SBA) Standard Operating Procedure (SOP) 50 10 6²; or
 - e. a business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business.
6. **Hawaii Operations.** As applicable, the Borrower is duly organized, validly existing and in good standing under the laws of the state under which the Borrower is organized and if the Borrower is not organized under the laws of the State of Hawaii, the Borrower is qualified to do business in the State of Hawaii. So long as any portion of the Loan is outstanding, the Borrower shall maintain substantially all of its employees for the project being financed (exclusive of sales staff) or operations for the project within the State of Hawaii. Also, the Borrower is an Eligible Borrower as defined under the SSBCI Capital Program Policy Guidelines, as may be amended.
7. **Criminal and Civil Matters.** Neither the Borrower nor any of its affiliates, subsidiaries, officers, directors and any person who, directly or indirectly, holds a pecuniary interest in the Borrower of 20% or more: (i) have any criminal convictions incident to the application for or performance of a state contract or subcontract, and (ii) have any criminal convictions or have been held liable in any civil proceeding that negatively reflects on the person's business integrity, including without limitation, 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. Also, the Borrower is not in material violation of any federal or state law, judgment, decree, order, or governmental rule or regulation.
8. **Borrower Size.** Borrower does not have more than 750 employees.
9. **SSBCI Reporting.** The Borrower shall cooperate with the Lender, HGIA, HTDC, The U.S. Treasury, and any of their representatives, and provide the following information no less than annually or when requested by aforementioned agencies:
- a. the total principal amount of each Loan or authorized as a line of credit, and of that amount, the portion that is from non-private sources;

¹ A construction loan permitted under the guidance on passive real estate investment in the SSBCI Capital Program Policy Guidelines will not be considered a speculative business for purposes of SSBCI.

² See chapter 3.A.8.b of SBA SOP 50 10 6 (effective October 1, 2020), which specifies the following with respect to marijuana-related businesses: "Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance."

- b. the date of the initial disbursement of the Loan;
- c. the current outstanding Loan balance;
- d. the Borrower's annual gross revenues for its most recent fiscal or calendar year;
- e. the Borrower's net income for its most recent fiscal or calendar year;
- f. the Borrower's Full Time Equivalent employees;
- g. the Borrower's Part Time Equivalent employees;
- h. The average wage of all employees;
- i. the estimated number of jobs created or retained as a result of the Loan;
- j. the amount of additional private financing occurring for or on behalf of the Borrower after the closing of the Loan; and
- k. as may be requested by HGIA or Lender from time to time, any other information from required by HGIA or under the SSBCI Program, including any rules, guidelines and regulations, which may be promulgated, or amended thereunder.

The aforementioned information shall be provided by the Borrower to HGIA, the Lender and the State of Hawaii as requested, to provide reports and any other information required from time to time under the HI-CAP Collateral Program and the SSBCI Capital Program Policy Guidelines, including any rules, guidelines and regulations which may be promulgated, or amended from time to time.

10. Minority or Women or Veteran-Owned or Controlled³ Business Enterprises.

The Borrower is is not a Minority-Owned or Women-Owned or Veteran-Owned Business Enterprise.

11. No Interest in Cash Collateral Funds. The Borrower understands and has not been promised or told by the Lender, its employees or agents that it has any legal, beneficial or equitable interest in any Cash Collateral funds.

12. Fees to HGIA. The Lender shall pay HGIA a Closing Fee and an Annual Fee as set forth below. The Borrower understands that said fees may be charged by the Lender to the Borrower and agrees to promptly remit payment to the Lender upon invoicing:

- 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. The Lender shall remit payment of the Annual Fee to HGIA based on the actual Term Loan Collateral Requirement, Revolving Loan Collateral Requirement or Draw to Term Loan Collateral Requirement, as applicable under Section 3 of the Cash Collateral Deposit Agreement 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). The minimum Annual Fee due will be \$50.00.

13. Disclaimer. The Borrower is aware that it has been offered a loan by the Lender which will have a HI-CAP Collateral Program cash collateral deposit. HGIA is not a party to the loan and plays no role in the Lender's decision regarding whether or not to make the loan, or in the setting of the interest rate, fees, duration or any other terms or conditions of the loan. The Lender's rights and remedies are delineated in the loan agreement between itself and the Borrower and in laws applicable to any financing. HGIA is not involved in any decision by the Lender with respect to

³ The term "owned and controlled" means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community of which the institution services is predominantly comprised of such individuals.

enforcing the Lender's rights under the loan agreement. However, HGIA has rights of subrogation. In the event a claim is made by the Lender on the HI-CAP Collateral Program Loan, HGIA may exercise its right to continue collection efforts.

Passive Real Estate Investment Exception. 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, the Borrower represents and warrants the following:

- a. _____ is a co-borrower or a guarantor of the Loan, as applicable;
- b. Both the Borrower and _____ have executed all required certifications, as applicable;
- c. Each natural person holding an ownership interest constituting at least twenty percent (20%) of the Borrower and the _____ has provided a personal guaranty in favor of the Lender for the Loan; and
- d. Borrower and _____ have a written lease with a term at least equal to the term of the Loan, including options to renew exercisable solely by _____
- e. The percentage of space occupied by _____ meets SSBCI requirements.

Borrower shall take all action necessary to cause the terms and conditions in the Lender's Loan Documents, HGIA's HI-CAP Collateral Program Documents and this Certificate and Agreement to be satisfied in all respects.

Borrower further agrees that Lender may provide any information or knowledge the Lender may have about the Borrower or about any matter relating to the Loan or the Loan Documents as referenced in the Certificate and Agreement to HGIA or its successors.

NAME OF BORROWER

a _____

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

Appendix F – Operating Company Certification

STATE SMALL BUSINESS CREDIT INITIATIVE
HI-CAP COLLATERAL SUPPORT PROGRAM

OPERATING COMPANY CERTIFICATION

[For Holding Company Loans]

BETWEEN

LENDER AND OPERATING COMPANY

In connection with that certain loan from _____ (the "Lender") to _____ (the "Borrower"), dated on or about the date of this Operating Company Certification (the "Loan"), and in furtherance of the State Small Business Credit Initiative (the "SSBCI"), HI-CAP Collateral Support Program (the "HI-CAP Collateral") administered by the Hawaii Green Infrastructure Authority ("HGIA"), for the benefit of the Lender and the Borrower and in accordance with the SSBCI Capital Program Policy Guidelines, as may be amended, _____, a _____ ("OPERATING COMPANY") represents and warrants to the Lender and HGIA:

1. **Sex Offender Certification.** No principal of the Operating Company listed above has been convicted of a sex offense against a minor (as such terms are defined in 34 U.S.C. § 20911). For the purposes of this certification, "principal" is defined as "if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, or other entity, each director, each of the five most highly compensated executives or officers or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.
2. **Business Purpose.** The Loan proceeds will be used for a "business purpose." A business purpose includes, but is not limited to, start-up costs, working capital, franchise fees, acquisition of equipment, inventory, or services used in the production, manufacturing or delivery of business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term "business purpose" excludes acquiring or holding passive investments in real estate, the purchase of securities, except as permitted in Section 3.f. below; and lobbying activities as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended (2 U.S.C. §1602(7)).
3. **Prohibited Use of Loan.** The loan proceeds will not be used:
 - a. for any impermissible purpose under the SSBCI Capital Program Policy Guidelines, as may be amended, including without limitation any impermissible purposes set forth in Sections VII.f & VIII.f and 12 U.S. Code § 5704;
 - b. to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or Local Government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or Local Government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. §1352;
 - c. to repay delinquent Federal or State income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
 - d. to repay taxes held in trust or escrow (e.g. payroll or sales taxes);

- e. to reimburse funds owed to any owner, including any equity investment or investment of capital for the business' continuance; or
- f. to purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.

3. **Affiliations.** OPERATING COMPANY is not:

- a. an executive officer, director, or principal shareholder of the Lender;
- b. a member of the immediate family of an executive officer, director, or principal shareholder of the Lender; or
- c. a related interest or immediate family member of any such executive officer, director, or principal shareholder of the Lender.

For the purposes of the above three Operating Company affiliation restrictions, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to Lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

4. **Business.** OPERATING COMPANY is not:

- a. 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 business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade¹;
- b. a business that earns more than half of its annual net revenue from lending activities; unless the business is (1) a Community Development Financial Institution (CDFI) that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;
- c. 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;
- d. a business engaged in activities that are prohibited by federal law or if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted. (this includes business that make, sell, service or distribute products or services used in connection with an illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in Small Business Administration (SBA) Standard Operating Procedure (SOP) 50 10 6²; or
- e. a business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities but is not restricted

¹ A construction loan permitted under the guidance on passive real estate investment in the SSBCI Capital Program Policy Guidelines will not be considered a speculative business for purposes of SSBCI.

² See chapter 3.A.8.b of SBA SOP 50 10 6 (effective October 1, 2020), which specifies the following with respect to marijuana-related businesses: "Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance."

from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business.

Operating Company agrees that Lender may provide any information or knowledge the Lender may have about the Operating Company or about any matter relating to the Loan or the Loan Documents as referenced in the Loan to Borrower to HGIA or its successors.

NAME OF OPERATING COMPANY

_____,
a _____

By: _____

Name: _____

Its: _____

Date: _____

SAMPLE

Appendix G – Cash Collateral Deposit Agreement

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]

Appendix H – Annual Fee Invoice



**HI-CAP COLLATERAL SUPPORT PROGRAM
Annual Fee Invoice**

Statement Date: **5/1/2023**

| | | | |
|---------------------------|--------------------------|-----------------------|----------------------|
| Financial Institution: | <u>XYZ Bank</u> | EIN: | <u>99-9999999</u> |
| Contact: | <u>Happy Banker</u> | Email: | <u>Email address</u> |
| Contact: | <u>A/P Dept</u> | Email: | <u>Email address</u> |
| Borrower's Name: | <u>ABC Company, Inc.</u> | Loan Number: | <u>12345678</u> |
| Original Loan Amount: | <u>\$ 250,000.00</u> | Maturity Date: | <u>June 30, 2030</u> |
| Original Cash Collateral: | <u>\$ 50,000.00</u> | Collateral Support %: | <u>20.0%</u> |

| | |
|--|----------------------|
| Ending Loan Balance (prior period): | <u>\$ 250,000.00</u> |
| Estimated Ending Loan Balance (current period): | <u>\$ 224,413.43</u> |
| Ending Cash Collateral Balance (prior period): | <u>\$ 50,000.00</u> |
| Estimated Ending Cash Collateral Balance (current period): | <u>\$ 44,882.69</u> |

Annual Fee Due: **7/15/2023** \$ 224.41

| | |
|--|----------------------|
| Actual Lender Ending Loan Balance (current period): | <u>\$ 220,000.00</u> |
| Amount of Collateral Support % Required: | <u>20.0%</u> |
| Actual Lender Ending Cash Collateral Balance (current period): | <u>\$ 44,000.00</u> |
| Actual HI-CAP Collateral Annual Fee Due: | <u>\$ 220.00</u> |

| | |
|---|----------------|
| Current Status of Loan (Current, Delinquent, Paid off): | <u>Current</u> |
| Last Payment Date: | <u>N/A</u> |
| If Delinquent: Number of Days Past Due: | <u>N/A</u> |
| Amount Past Due: | <u>N/A</u> |

Additional financing provided to Borrower subsequent to this SSBCI supported loan:

| | | | |
|-------------------|-----------------------------|--------------------|----------------------|
| Loan/Line Type: | <u>Working Capital Line</u> | Loan/Line Balance: | <u>\$ 150,000.00</u> |
| Loan/Line Amount: | <u>\$ 250,000.00</u> | Loan/Line Status: | <u>Current</u> |

Please remit your check payable to the **Hawaii Green Infrastructure Authority**
along with a **Loan Statement** reflecting the current balance of the Loan, to the address below.

| | | |
|---------------|-----------------|----------|
| XYZ Bank | Statement Date: | 5/1/2023 |
| Happy Banker | | |
| Email address | | |

Payment Due Date: 7/15/2023

Hawaii Green Infrastructure Authority
P.O. Box 2359
Honolulu, HI 96804
Attn: HI-CAP Collateral Support Program

Amount Remitted: **\$ 220.00**

Appendix I – Annual Report Template

**HI-CAP Collateral
Annual SSBCI Report**

| Loan Number | Borrower | SSBCI Supported Loan | | Loan Status | Days Past Due | Amount Past Due | Last Paid Date | Loan Type | Additional Financing Provided | | Loan Status | SSBCI Funds Lost |
|-------------|-------------------|----------------------|-----------------|-------------|---------------|-----------------|----------------|---------------|-------------------------------|-----------------|-------------|------------------|
| | | Original Loan Amount | Current Balance | | | | | | Amount | Current Balance | | |
| 1234567 | ABC Company, Inc. | \$ 200,000.00 | \$ 150,000.00 | Current | N/A | N/A | N/A | Working Capit | \$ 250,000.00 | \$ 225,000.00 | Current | N/A |
| 7891011 | XYZ Company LLC | \$ 100,000.00 | \$ - | Charged Off | N/A | N/A | N/A | None | | | | \$ 20,000.00 |

Appendix J – Collateral Support Claim Form



HI-CAP Collateral Support Program Collateral Support Claim Form

NOTE: A Participating Lender is required to notify HGIA within thirty (30) days when the lender has charged off all or part of an SSBCI supported loan, as a result of default by a Borrower.

After the Participating Lender charges off all or part of an enrolled loan, after following its standard collection policies and procedures, including but not limited to seeking judgment and levying against collateral, the Lender may file a claim with HGIA by submitting this completed Collateral Support Claim Form after all of the borrower's collateral and security have been liquidated. Upon receipt and acceptance by HGIA of a claim filed by the lender, HGIA shall reimburse the Participating Lender for the lender's loss solely from funds in the Cash Collateral Account for that particular loan within 14 business days. Provided, however, that HGIA may reject a claim if the terms of the Participating Lender's Agreement have been violated.

Lender and Borrower Information:

Participating Lender: _____ Lender Contact Name: _____
Borrower Name: _____ Lender Contact Phone: _____
Borrower DBA: _____ Lender Contact Email: _____

Loan Information:

Original Loan Amount Enrolled: _____ Loan Number: _____
Default Amount: _____ Date of Default: _____
Is this loan secured? Yes No Date of Charge-off: _____
If yes, what form of security? _____

Lender's priority claim (if two or more claims filed against Borrower): _____

Claim Information:

Outstanding Principal: \$ _____
Accrued and Unpaid Interest: \$ _____
Out of pocket expenses \$ _____
(attach detailed explanation)
Description and value of liquidated collateral:
_____ \$(_____)
_____ \$(_____)
_____ \$(_____)
Net Amount Outstanding \$ _____

- The Participating Lender warrants that the manner in which this SSBCI supported Loan was charged off and liquidated is consistent with the Participating Lender's usual methods for taking action on loans not enrolled in the HI-CAP Collateral Program.



- As appropriate, Participating Lender will pursue additional recovery on this defaulted loan through legal proceedings on guarantees, and/or other sources, in usual methods taken for loans not enrolled in the HI-CAP Collateral Program.
- Participating Lender certifies it has given notice to HGIA of the initial enrollment of the loan and of any renewals or extensions of the loan.
- Participating Lender certifies that it has copied HGIA on all notices to the defaulted Borrower, as required under its Loan Documents, and have provided HGIA timely written notice describing in reasonable detail the circumstances of the event of default.

I certify that all of the information included herein and the accompanying documentation is true and correct and that I am authorized to sign this Collateral Support Claim form on behalf of the Participating Lender. I consent to any inquiry appropriate and necessary to verify or confirm the information being provided.

Authorized Signer:

By: _____

Name: _____

Its: _____

Date: _____

Please submit completed form and supporting documentation to HGIA via secure email to dbedt.hicap-loans@hawaii.gov or mail to the address indicated above.