



Virginia Small Business  
Financing Authority

**VIRGINIA SMALL BUSINESS FINANCING AUTHORITY  
STATE SMALL BUSINESS CREDIT INITIATIVE**

**CASH COLLATERAL PROGRAM  
CASH COLLATERAL DEPOSIT AGREEMENT**

THIS CASH COLLATERAL DEPOSIT AGREEMENT (the "Agreement") is dated \_\_\_\_\_, \_\_\_\_\_ and is between \_\_\_\_\_ ("Lender"), whose address is \_\_\_\_\_; and **Virginia Small Business Financing Authority** ("VSBFA"), a public body corporate and a political subdivision of the Commonwealth of Virginia whose address is 1220 Bank Street, Suite 300, P.O. Box 446, Richmond, Virginia 23218. As used in this Agreement, the VSBFA and the Lender are, individually, a "Party" and, collectively, the "Parties".

**RECITALS**

Whereas, the VSBFA has created the SSBCI Cash Collateral Program under the authority granted to it by the federal State Small Business Credit Initiative ("SSBCI") of the Small Business Jobs Act of 2010 (Title III of Public Law 111-240)("Act"); the Allocation Agreement dated August 15, 2011 and revised October 9, 2012 between the United States Department of the Treasury (the "Treasury") and the Commonwealth of Virginia (the "Participating State"); Title 2.2, Chapter 22, Section 2280 of the Code of Virginia.

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

Whereas, in pursuit of these goals, the VSBFA is willing, from time to time, to deposit funds with lenders to provide for a pledge by VSBFA of Cash Collateral (as hereinafter defined) in favor of such Lenders in support of the Lender's loans to Program-eligible borrowers; and

Whereas, in connection with each loan, the VSBFA and the Lender desire to sign this Agreement to provide for the pledge by VSBFA of the Cash Collateral in favor of the Lender pursuant to the Program, and to further delineate the rights, duties and liabilities of the Parties with respect to the Cash Collateral.

NOW, THEREFORE, in consideration of the recitals and mutual agreements contained herein, the parties agree as follows

1. The Loans.

- (a) If Lender determines a loan request from a borrower meets its customary underwriting requirements, except for a deficiency in collateral, Lender can request VSBFA's support under the Program by completing and submitting to VSBFA a Lender's Application (Exhibit A), and having Borrower submit a Borrower's Agreement and Application (Exhibit B); both of which include the required certifications under the State Small Business Credit Initiative Act of 2010 (the "Certifications"), together with copies of Lender's loan request package (credit approval, credit memo, cash flow analysis, collateral value analysis, commitment letter and other documentation as required by Lender to reach a credit decision.
- (b) Lender must: (i) approve the Loan subject to the VSBFA's support of the Loan through the Program, (ii) determine required collateral support amount, (iii) submit the loan package to VSBFA for review and approval for Program participation, (iv) close the Loan using Lender's standard documents, and (v) forward copies of the executed note and other loan documents to VSBFA, as requested.

2. Establishment of Cash Collateral Account; Reduction of Cash Deposit.

- (a) The Lender shall establish in the name of Virginia Small Business Financing Authority that certain account maintained at the Lender (the "Collateral Account"). The Collateral Account will be owned at all times by VSBFA.
- (b) For each Loan, Lender and VSBFA will determine the amount of the cash deposit to be paid into the Collateral Account by VSBFA (the "Cash Deposit"), which shall be mailed or sent electronically to Lender in accordance with Lender's collateral deficiency. The maximum amount of the Cash Deposit for each loan will be the lesser of 40% of the initial Loan amount, or (c) \$500,000. The Collateral Account shall be interest bearing, and Lender may not charge VSBFA for any fees for the maintenance or administration of the Collateral Account. So long as no default shall have occurred and be continuing with respect to the Loan, VSBFA is authorized to withdraw at any time all interest income that has been credited to the Collateral Account.
- (c) Funds in the Collateral Account are public deposits pursuant to the Security for Public Deposits Act (§ 2.2-4400, et. seq., of the Code of Virginia (1950), as amended (the "SPDA")), and must be so indicated on Lender's records. Lender is subject to the collateralization and reporting requirements of the SPDA.
- (d) VSBFA hereby grants to Lender a security interest in the Collateral Account to secure Borrower's obligations under the Loan, subject to the terms and conditions of this Agreement. All funds credited to the Collateral Account shall be the exclusive property of, and solely controlled by, VSBFA, subject to the terms of this Agreement, provided VSBFA may not withdraw funds from the Collateral Account except as set forth in this Agreement.
- (e) For term Loans, the Collateral Account will be reduced proportionately with the principal reduction of such Loan and returned to VSBFA, on an annual basis (or sooner if the Loan is paid in full). For Loans which are lines of credit, if the line of credit remains unfunded for a period of 12 months, VSBFA may withdraw a portion or all of the Cash Deposit with respect to such Loan from the Collateral Account upon 30 days' written notice to Lender and Borrower.

3. Closing and Disbursement of Loans.

- (a) Lender shall close and disburse each Loan in strict accordance with the terms and conditions stated in Lender's loan commitment and VSBFA's approval letter. Lender shall cause to be executed a promissory note (the "Note") for the maximum amount approved, and all additional instruments, and shall take such other actions, consistent with prudent closing and disbursement practices and subject to its customary standards, required to fully protect or preserve the interests of Lender and VSBFA in the Loan.
- (b) VSBFA shall be entitled at any time, after 30 days' written notice to Lender, to examine and obtain copies of all Note(s), loan agreements, security instruments, guaranties and all other instruments, agreements and documents evidencing, securing or pertaining to the Loan (collectively, the "Loan Documents"), and the loan repayment records held by Lender which relate to Loans made pursuant to this Agreement.
- (c) Immediately after the closing of the Loan, Lender shall furnish VSBFA with a copy of the executed Note together with the principal Loan Documents as VSBFA may request. At closing of each Loan, Lender shall have Borrower and any guarantors execute and deliver a

Borrower's Agreement for the benefit of Lender and VSBFA, in the form provided by VSBFA.

4. SSBCI PROGRAM REQUIREMENTS

VSBFA and the Lender acknowledge that the Program will be funded, in whole or in part, by State Small Business Credit Initiative Program funds, as available, and as such, both VSBFA and the Lender agree that the use of funds pursuant to this Agreement shall be governed by, and not be in derogation of, any rules, regulations, or guidelines for the Program promulgated or issued by the US Treasury or the Commonwealth of Virginia.

As to each Loan in which VSBFA provides collateral support, the Lender agrees that it will have determined to the best of its knowledge and belief that all of the following are true and correct:

- a) The proceeds of the Loan will not be used:
  - (i) to repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
  - (ii) to repay taxes held in trust or escrow (e.g., payroll or sales taxes); to reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance;
  - (iii) to purchase any portion of the ownership interest of any owner of the business; or
  - (iv) to purchase goodwill; or
  - (iv) to refinance a loan previously made to the Borrower by the Lender;
- b) No principal of the Borrower or the Lender has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911));
- c) The Lender is in material compliance with all federal and state laws, rules, and regulations pertaining to the making of loans (including 31 C.F.R. § 103.121)

5. Representations and Warranties. Lender represents to VSBFA as follows:

- (a) This Agreement is a legal, valid and binding obligation of Lender enforceable in accordance with its terms, except as enforceability may be limited by principles of public policy and subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors and the rules of law governing specific performance, injunctive relief or other equitable remedies.
- (b) As of the date of the closing of the Loan, all Loan Documents have been duly and properly executed and delivered, are the valid, binding and enforceable obligations of Borrower and any guarantor, as applicable, and Lender has properly perfected all security interests and obtained all guaranties stated as conditions in Lender's Application, the Lender's loan commitment to the Borrower, and VSBFA's commitment letter.
- (c) The Lender has the power and authority to enter into and perform its obligations under the Loan Documents and this Agreement and shall perform all of its obligations and duties under the Loan Documents and this Agreement;

- (d) The Lender is in material compliance with all federal and state laws, rules, and regulations pertaining to the making of loans; notwithstanding the foregoing, if the Lender is under a memorandum of understanding or other regulatory action, it has submitted to the VSBFA a certification from its general counsel affirming that the Lender has addressed the issues raised by the government and is in substantial compliance with the regulator's guidance; except as previously disclosed by Lender.
- (e) If the Lender is a Community Development Financial Institution ("CDFI") or other non-depository institution, please attach a narrative outlining your organization's commercial lending history/performance and financial and managerial capacity to participate in this program, Articles of Incorporation, By-Laws, and a copy of your most recent audited financial statement;
- (f) None of the material terms and conditions of the Loan or Loan Documents shall be amended without the express prior written approval of the VSBFA Executive Director;
- (g) The full amount of the Loan would not be extended by the Lender unless VSBFA's support under the Cash Collateral Program is provided;
- (h) The Loan will not be used to induce the Borrower to leave Virginia;
- (i) The Lender has performed a credit analysis of the Borrower that meets Lender's usual and customary standards;
- (j) 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 Agreement and the Loan Documents, and no party to the Loan shall have any defense or claim against the Lender arising out of the Loan;
- (k) The Loan shall be in accordance with applicable Federal and State laws, including but not limited to, laws governing type of loans, interest rates and priority of security;
- (l) The Borrower, as well as any co-maker, guarantor, endorser, other debtor or obligor of the Loan, has consented, or will prior to the closing of the Loan, consent to the terms and conditions of this Agreement and the Borrower's Agreement and Application;
- (m) To the extent required under law, the security documents for the Loan were (and/or will be) properly recorded in order to validly perfect and maintain a security interest in the collateral securing the Loan, and the Lender will take whatever additional actions may be necessary to validly perfect and maintain a security interest in all collateral securing the Loan;

6. Reporting. Lender shall provide to VSBFA the following written reports ("Reports"):

- (a) Semi-annually, the Lender is to submit to the VSBFA within 10 days of the period-end a report containing the name of the Borrower, type of Loan, the original balance of the Loan, and the outstanding balance of Loan, note date and maturity date as of the end of such reporting period. The reporting periods will be from January 1 – June 30 and July 1 - December 31. Loan reports are to be mailed, or faxed to VSBFA at 804-225-3384, or emailed as requested.
- (b) Such additional information and reports in form and detail as VSBFA may reasonably require or as may be required under the Act.

- (c) All Reports shall be certified by Lender's president, chief financial officer or other authorized officer as being true, correct and complete, and shall be mailed or faxed to VSBFA at 804-225-3384 or emailed as requested (to such other address as VSBFA may require).
- (d) Notice of any material adverse change in the financial condition, business affairs or operations of Borrower, promptly upon Lender's gaining knowledge or notice thereof.

7. Administration of Loan. For each loan:

- (a) Lender shall hold the Loan Documents and shall receive all payments of principal, interest and other fees and charges. Lender shall maintain accurate records of: (i) any and all disbursements of the Loan, (ii) each payment of principal and interest made by Borrower for credit to the Loan, and (iii) all accrued interest on the Loan.
- (b) Lender shall immediately notify VSBFA in writing if there are any errors, omissions or mistakes with respect to any security interests, liens and/or guaranties or if the Loan has not been closed and disbursed in accordance with Lender's loan commitment or VSBFA's approval letter. Lender shall take all actions necessary and proper for administering and servicing the Loan in all respects consistent with all applicable laws and regulations and in a manner consistent with its normal lending practices. Lender shall take such usual and customary steps necessary to maintain perfected priority security interests in any collateral for the Loan, including, without limitation re-perfection of the security interest in the event of changes of in the collateral or Borrower. Failure of Lender to perfect liens and security interests or obtain guaranties required as conditions in VSBFA's approval letter or Lender's loan commitment, or failure of Lender to obtain written approval from VSBFA for repayment terms or a repayment schedule other than that originally approved by VSBFA, or failure of Lender to comply with the terms and conditions of this Agreement, shall release VSBFA from its obligations under this Agreement.
- (c) Upon notice to Lender, VSBFA may inspect the files of Lender relating to the Loan, during normal business hours of Lender. Lender agrees to retain all documents and instruments with respect to the Loan until one year from the date of loan payout or January 30, 2020, whichever is later, which shall be subject to inspection by VSBFA at reasonable times upon reasonable notice.
- (d) Lender will make available to the Inspector General of the U.S. Treasury all books and records related to the use of the funds provided by VSBFA, subject to the Right to Financial Privacy Act (12 U.S.C. § 3401 et seq.).
- (e) Lender shall not, without prior written consent of VSBFA, (VSBFA to provide written response to Lender within 10 business days of each notice or request from Lender.)
  - (i) make or consent to any material amendment, extension or modification of or addition or supplement to the Note, or any of the terms or conditions of any of the Loan Documents;
  - (ii) make or consent to any material compromise, release, waiver, consent, extension, indulgence or other action or inaction in respect of any of the terms of the Loan Documents or any guarantor or obligor or standby creditor;

- (iii) make or consent to any substitution or release or waiver, in whole or in part, of any security for the Loan Documents or any guaranty which may be held at any time by Lender;
  - (iv) make or consent to any bankruptcy, insolvency, reorganization, arrangement, adjustment, composition, liquidation, or the like of Borrower or any guarantor;
  - (v) make or consent to any sale, lease or transfer of an asset(s) that would have a significant adverse effect on the financial status of the Borrower or guarantor to any other person, firm or entity;
  - (vi) make or consent to any act or omission on Lender's part with respect to any of the Loan Documents or fail to file, record or otherwise perfect any of the same;
  - (vii) approve or consent to (a) the merger or consolidation of Borrower with any other entity, or (b) any material change in Borrower's organizational structure or identity;
  - (viii) accelerate the maturity of the Note; or
  - (ix) sue upon any Loan Documents.
- (f) All servicing requirements with respect to the Loan shall be the responsibility of Lender, which shall follow accepted standards of loan servicing employed by prudent lenders generally. Upon the occurrence of any material default by the Borrower or guarantor under any of the Loan documents, the Lender shall consult in good faith with the VSBFA. Notwithstanding the foregoing, if such a default is caused by the nonpayment of principal or interest, by the bankruptcy of the Borrower or a guarantor, or by the occurrence of an event that would have a material adverse effect on the repayment of the Loan or the collateral securing the Loan (in the Lender's reasonable judgment), the Lender shall not waive such default without the written consent of the VSBFA.

8. Defaults and Remedies; Enforcement Action; and Claims. For each Loan.

- (a) Lender shall give written notice to VSBFA within thirty (30) days of Lender's receipt of knowledge or notice of an occurrence of a material default under the Loan Documents (howsoever defined). Lender shall give written notice to VSBFA prior to issuing a demand letter to Borrower or guarantor or prior to taking any enforcement action or exercising any remedy against Borrower or any guarantor. However, Lender may immediately exercise rights against collateral, such as set off and foreclosure, if Lender in good faith believes collateral is subject to removal or spoliation or threatens to speedily decline in value.
- (b) Enforcement Actions. Prior to requesting money from the Collateral Account, Lender shall first take control (via foreclosure, deed-in-lieu of foreclosure, possession or other similar action, including exercising the Lender's rights as to any applicable assignment of rents) of any and such collateral, other than the Collateral Account, (the "Additional Collateral") and the Lender shall sell or liquidate the Additional Collateral and apply the proceeds thereof to the Loan.
- (c) By providing VSBFA with a Claim Form to be provided, Lender shall be deemed thereby to certify that the Loan has been disbursed and serviced in compliance with the Act and this Agreement, that Lender has fully complied with the terms and conditions of this Agreement, all collection efforts and liquidation efforts were made by Lender and have

been exhausted, that this Agreement remains in full force and effect with respect to the Loan, and that the representations and warranties in this Agreement are true and correct.

- (d) Within thirty (30) days after receipt of Lender's Claim Form, together with a certified transcript of the Loan account and a reporting and accounting of the Enforcement Action, together with such other information in form and detail as VSBFA may request, and provided that Lender is not in breach or default of any terms, conditions, representations or warranties in this Agreement, VSBFA will withdraw the amount of the approved claim amount and send such amount to Lender to apply the amount thereof to reduce the principal balance of the Loan.
9. Recovery by Lender Subsequent to Payment of Claim. For each Loan. If after payment of a Claim by VSBFA, Lender recovers from or on behalf of Borrower, any guarantor or any Collateral any amount for which payment of the Claim was made, Lender shall promptly pay to VSBFA the amount of any such recovery. Notwithstanding anything to the contrary herein, Lender shall be required to make the foregoing payment solely to the extent that the amount recovered by Lender from Borrower, when added to the payments received by Lender under such Claim, exceeds Lender's loss on such Loan.
10. Assignment. For each Loan, Lender shall not assign, transfer, negotiate, sell or participate any of its interests, obligations or rights in the Loan, the Loan Documents or this Agreement without the prior written consent of VSBFA.
11. Application of Payments. For each Loan, after the occurrence and during the continuance of a default under the Loan Documents, Lender shall apply any payments or monies received from or on behalf of Borrower, any Collateral for the Loan, any guarantor or otherwise, according to Lender's standard practices as outlined in the Lender's note.
12. Separate Security; Additional Loans to Borrower.
- (a) In the event Lender obtains from Borrower, any guarantor or any other person or entity any additional collateral, guaranty or security that separately secures any portion of the Loan ("Additional Security"), Lender agrees (i) to immediately notify VSBFA thereof and provide a revised collateral analysis demonstrating to VSBFA that the Cash Deposit is still required and (ii) to exercise rights against the Additional Security pursuant to the provisions of Section 7 hereof prior to exercising rights against the Collateral Account.
  - (b) The VSBFA 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 (via foreclosure, deed-in-lieu of foreclosure, possession or other similar action) of any and all collateral securing the Loan and the Lender shall sell or liquidate the Additional Collateral and apply the gross proceeds thereof to the Loan prior to drawing any amount from the Collateral Account to repay the Loan up to the amount of any such shortfall in accordance with the procedures set forth in Section 8(b) above.
13. Return of Deposit. The security interest granted by this Agreement shall automatically terminate and, at VSBFA's option, the Cash Deposit shall be returned to VSBFA upon the first to occur of:
- (a) Payment or credit in full of the Loan; or

- (b) An event of default or a breach of a representation or warranty by Lender under this Agreement;
  - (c) Mutual agreement of the parties hereto.
14. Entire Agreement. This Agreement, the Exhibits hereto and VSBFA's approval letter contain the sole and entire understanding and agreement between Lender and VSBFA with respect to its entire subject matter, and all prior negotiations, discussions, commitments, representations, agreements and understandings with respect hereto are merged herein. This Agreement cannot be changed or terminated orally. This Agreement shall inure to the benefit of, and be binding upon the parties, their successors and assigns.
  15. Collection Costs. In the event of any breach of the terms of this Agreement by any party hereto, such breaching party agrees to pay all reasonable expenses of every kind, including reasonable attorneys' fees and collection costs, which may be incurred by the other party in enforcing the other party's rights and remedies under this Agreement.
  16. Jurisdiction. The parties agree (a) that this Agreement shall be subject to and construed in accordance with the laws of the Commonwealth of Virginia; (b) that jurisdiction in any action or proceeding hereunder shall be only in the courts of the Commonwealth of Virginia, with venue only at the Circuit Court of the City of Richmond, Virginia; and (c) that service of any summons or complaint in any action or proceeding hereunder shall be made in accordance with applicable Virginia law.
  17. Successors and Assigns. Except as otherwise provided by law, any rule of law or regulation (including without limitation, any Executive Order of the Commonwealth of Virginia), VSBFA may not pledge, sub-participate, assign, or otherwise transfer its rights, duties or obligations in this 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, and/or its rights, duties or obligations under this Agreement or the Loan Documents, without the express prior written approval of the VSBFA Executive Director. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.
  18. Counterparts. This Agreement may be executed in counterpart originals, with each counterpart to be deemed an original Agreement, constituting a single instrument.
  19. Notice. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall either be in writing and shall be delivered personally to the recipient, sent to the recipient by reputable overnight courier service with charges prepaid or mailed to the recipient by United States certified or registered mail with return receipt requested and postage prepaid. Such notices, demands and other communications shall be sent to the parties hereto and their respective addresses indicated on the first page hereof.
  20. No General Obligation of Commonwealth. Lender acknowledges that the agreements herein made by VSBFA are solely those of the VSBFA. They are not guarantees or liabilities of the Commonwealth of Virginia, and the faith and credit of the Commonwealth of Virginia are not being pledged therefor.
  21. Lender Certifications.

For each Loan, Lender certifies to the best of its knowledge to the VSBFA:

- (a) Borrower is an Eligible Business (as defined in the State Small Business Credit Initiative Act of 2010 (P.L. 111-240 - Sept. 27, 2010) and does not have more than 250 employees in Virginia or more than 750 employees overall.
- (b) Borrower is a corporation, partnership, joint venture, sole proprietorship, cooperative, or other entity (including a state-designated charitable, religious or other non-profit or eleemosynary institution or faith-based organization), which is authorized to conduct business in Virginia.
- (c) The proceeds of the Loan will be used for a “Business Purpose”. A business purpose includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, 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.
- (d) The Loan proceeds will not be used to (i) repay delinquent federal or state income taxes unless Borrower has a payment plan in place with the relevant taxing authority; or (ii) repay taxes held in trust or escrow, e.g. payroll or sales taxes; or (iii) reimburse funds owed to any owner, including any equity injection or injection of capital for Borrower’s continuance; or (iv) to purchase any portion of the ownership interest of any owner of Borrower.
- (e) The Loan has not been made in order to place, under the protection of the Program, prior debt that is not covered under the Program and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender.
- (f) The Loan is not a refinancing of a loan previously made to Borrower by the financial institution lender or an affiliate of the financial institution lender.
- (g) Lender has not made the Loan to cover the unguaranteed portion of a U.S. Small Business Administration (SBA) loan, or, to its knowledge, to cover the unguaranteed portion of a loan guaranteed by any other federal, state or local government or public entity.
- (h) Lender has at least 20% of its own private capital at risk with respect to the Loan.
- (i) Lender will make available to the Inspector General of the U.S. Treasury all books and records related to the use of the funds provided by VSBFA, subject to the Right to Financial Privacy Act (12 U.S.C. § 3401 et seq.), including detailed Loan records, as applicable.
- (j) Neither Borrower nor any of its Principals is an executive officer, director, or principal shareholder of Lender, a member of the immediate family of an executive officer, director or principal shareholder of Lender, or a related interest of an executive officer, director, or principal shareholder of Lender. For the purpose of this provision, the terms “executive officer,” “director,” “principal shareholder,” “immediate family,” and “related interest” shall refer to the same relationship to the Lender, whether or not Lender is a member bank, as the relationship specified for those terms in connection with member banks in Part 215 of Title 12 of the Code of Federal Regulations, or any successor to such regulation.
- (k) To the best of the Lender's knowledge, Borrower is not:

- (i) a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the Borrower and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of Borrower;
  - (ii) a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company Community Development Financial Institution (CDFI);
  - (iii) 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;
  - (iv) a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted, including the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution; or
  - (v) a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales.
- (l) Lender is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, and has all requisite authority and right and power to enter into and perform its obligations pursuant to this Agreement. The execution and delivery of this Agreement by Lender and the performance of the transactions contemplated by this Agreement have been duly and validly authorized by all required corporate or other action of Lender, as is necessary.
  - (m) Lender has not received knowledge of any fact or circumstance (but without independent inquiry) that would make any of Borrower's certifications, representations or warranties with respect to the Loan, including those in the Certification, untrue, incorrect or misleading.
  - (n) As required by Section 3011(c)(2) of the Small Business Jobs Act of 2010, the private entity hereby certifies to the participating State that the Principals of the private entity have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). National registry is at <http://www.nsopw.gov/Core/Portal.aspx>. For the purposes of this Certification, "Principal" means the following: 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, each director, each of the five most highly compensated executives or officers of the private entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the private entity.

**Lender agrees to notify the VSBFA if and when it becomes aware of an event which occurs that renders this certification to be obsolete. Such event could be a change in principals or a conviction of an existing principal**

**for a sex offense against a minor. The VSBFA, in its own discretion, may require a periodic resubmission of the certifications on an annual basis.**

IN WITNESS WHEREOF, Lender and VSBFA have caused this Agreement to be duly executed as of the date first above written.

Name of Lender

By: \_\_\_\_\_

Name:

Title:

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

By: \_\_\_\_\_ 54-1300845  
EIN

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**LENDER'S CERTIFICATION**

I certify to the VSBFA that the loan represented by this Lender's Application is approved subject to terms specified. Without VSBFA's participation, as requested, we would not be willing to make this loan, and in our opinion the financial assistance requested is not otherwise available on reasonable terms. I have reviewed and verified all of the information in the Borrower's loan application, Borrower's Certification and the documentation supporting this Application. I certify, to the extent of my knowledge that the borrower is eligible (for the purposes of this program), the proceeds will be used for an eligible purpose in Virginia and the owners and managers of the borrower business are of good character. The loan has not been made in order to place under the protection of the approved state program prior debt that is not covered under the approved state program and that is or was owned by the borrower to the Lender or to an affiliate of the Lender. The loan is not a refinancing of a loan previously made to that borrower by the Lender or an affiliate of the Lender. The Lender is not attempting to enroll the unguaranteed portions of SBA-guaranteed loans.

**Name of Lender**

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Certifying Officer Signature

Title

Date

## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY STATE SMALL BUSINESS CREDIT INITIATIVE

### CASH COLLATERAL PROGRAM BORROWER'S AGREEMENT and APPLICATION

THIS AGREEMENT (the "Borrower Agreement") is dated \_\_\_\_\_, 20\_\_\_\_, and is given by ("Borrower"), whose address is \_\_\_\_\_; and by \_\_\_\_\_, guarantor(s) of the Loan described below (collectively, "Guarantor"); and is for the benefit of \_\_\_\_\_, ("Lender") and the **Virginia Small Business Financing Authority** ("VSBFA").

#### **Borrower's Contact Information:**

Name and title of individual: \_\_\_\_\_ E-mail address \_\_\_\_\_ Phone # \_\_\_\_\_

#### RECITALS

- A. Lender intends to make a loan (the "Loan") to Borrower for the purpose set forth in Lender's loan commitment.
- B. The Loan shall be evidenced by a promissory note payable by Borrower to the order of Lender (the "Note") and shall be made pursuant to written agreements between Borrower and Lender (the "Loan Documents").
- C. As additional security for the Loan, and pursuant to the State Small Business Credit Initiative Act of 2010 (P.L. 111-240 - Sept. 27, 2010) (the "Act"), VSBFA is making a deposit of funds in the Collateral Account as described in the Cash Collateral Deposit Agreement between Lender and VSBFA with respect to the Loan dated \_\_\_\_\_ (the "Agreement").
- D. In consideration for Lender's making the Loan and for VSBFA's making a Cash Deposit in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), Borrower and Guarantor(s) shall execute this Borrower Agreement for the benefit of Lender and VSBFA.

NOW, THEREFORE, Borrower and Guarantor(s), jointly and severally, hereby represent, covenant and agree with VSBFA and Lender as follows:

#### AGREEMENT

- 1.1** Reimbursement, Enforcement and Indemnification. Borrower and Guarantor(s), jointly and severally, agree to reimburse VSBFA for any payment made by VSBFA under the Agreement, together with interest and costs of collection, including attorney's fees. Borrower and Guarantor(s), jointly and severally, acknowledge and agree that VSBFA may at its option assume (and in such event shall be subrogated to) all rights and remedies of Lender under the Loan Documents and may enforce any such rights or remedies against any collateral for the Loan, and against Borrower and Guarantor(s). Additionally, Borrower and Guarantor(s) shall jointly and severally hold VSBFA and Lender harmless from, and hereby indemnify each of VSBFA and Lender against, and agree to pay to VSBFA and Lender any and all liabilities, damages, claims, costs and losses incurred or suffered by either of VSBFA or Lender, including attorneys' fees and costs, resulting from (a) any materially incorrect certification, statement, representation or warranty made by Borrower, Guarantor(s), or an agent of Borrower or Guarantor(s), to VSBFA or Lender in connection with the Loan, the Agreement, this Borrower Agreement or any of the other Loan Documents or (b) any breach by Borrower or Guarantor(s) of the terms and conditions of this Agreement or any of the other Loan Documents. Borrower and Guarantor(s) also acknowledge that any statement, certification or

representation made by Borrower or any of the Guarantor(s) in connection with the Loan is subject to the penalties provided in 18 U.S.C. § 1001.

**2.1. Set Off.** Borrower and Guarantor(s), jointly and severally, acknowledge and agree that all loan repayment obligations of Borrower and Guarantors under the Agreement, this Borrower Agreement, and the Loan **are subject to collection pursuant to the Set-Off Debt Collection Program as authorized under the Virginia Debt Collection Act** (§§ 58.1-520 - 58.1-535 of the Code of Virginia (1950), as amended).

**3.1 Use of Proceeds.** The Borrower hereby certifies to the VSBFA as follows:

(a) The loan proceeds will be used for a "business purpose." Business purpose includes, but is limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes: activities that relate to acquiring or holding passive investments, such as commercial real estate ownership and the purchase of securities; and lobbying activities, as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

(b) The loan proceeds will not be used to:

- i. repay a delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority; or
- ii. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or
- iii. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or
- iv. to purchase any portion of the ownership interest of any owner of the business; or
- v. to purchase goodwill.

(c) The Borrower is not:

- i. an executive officer, director, or principal shareholder of the lender; or
- ii. a member of the immediate family of an executive officer, director, or principal shareholder of the lenders; or
- iii. a related interest of such executive officer, director, principal shareholder, or member of the immediate family.

For the purposes of these three restrictions, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to a lender as the relationship described in Part 215 of Title 12 of the Code of Federal Regulations, or any successor to such part.

(d) The Borrower is not:

- i. 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

- ii. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company Community Development Financial Institutions; or
- iii. 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; or
- iv. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or
- v. a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

**4.1** Borrower Sex Offender Certification. As required by Section 3011(c)(2) of the Small Business Jobs Act of 2010, the private entity hereby certifies to the participating State that no Principals of the private entity have been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). National registry is at <http://www.nsopw.gov/Core/Portal.aspx>. For the purposes of this Certification, "Principal" means the following: 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, each director, each of the five most highly compensated executives or officers of the private entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the private entity.

**5.1** Miscellaneous.

- (a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia. The parties agree that jurisdiction shall be solely in the courts of the Commonwealth of Virginia and that venue shall be solely in the Circuit Court for the City of Richmond, Virginia. In the event of any lawsuit by VSBFA to enforce the provision of this Agreement, Borrower and Guarantor(s), jointly and severally, agree that the jurisdiction and venue provisions of this Section 3.1 shall apply to the Note, the Loan Documents and any guaranties executed by Guarantor(s).
- (b) All notifications required by this Agreement shall be given in the manner provided in the Loan Documents. Borrower and Guarantor shall promptly notify VSBFA and the Lender in writing of any change in its or their addresses.
- (c) If at any time any provision of this Agreement becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, the validity, nor the enforceability of the remaining provisions hereof shall in any way be affected or impaired. This Agreement may be executed in counterpart originals, with each counterpart to be deemed an original Agreement, constituting a single instrument. This Agreement cannot be changed or terminated orally. This Agreement shall inure to the benefit of, and be binding upon the parties, their successors and assigns.

(d) Borrower and Guarantor(s) authorize Lender to provide to VSBFA any and all information, including financial information, relating to the Loan, Borrower or any of Guarantor(s), at the request of VSBFA.

**6.1 Additional Information Required:**

OWNERSHIP (%): Male  Female

RACE: (Voluntary) American Indian or Alaska Native   
Asian   
Black or African-American   
Native Hawaiian or Pacific Islander   
White

ETHNICITY (Voluntary) Hispanic or Latino

VETERAN STATUS: Veteran  Non-Veteran

Primary Business Activity:

NAICS

Annual Sales in Last Fiscal Year: \_\_\_\_\_

Year Business Established:

Total Full Time Employees (*2 half time employees equals 1 full time employee*): .

Estimated Jobs Created by this Loan over next 3 years:

Estimated Jobs Retained by this Loan over next 3 years:

Does the Borrower, including any parent or subsidiary or affiliated entity, in Virginia:

have 250 or fewer employees? Yes  No  Current #

OR have less than \$10,000,000 in annual gross revenues over each of the last three (3) fiscal years? Yes  No

OR have less than \$2,000,000 in net worth? Yes  No

*If the answer to any of the following questions is “yes”, please furnish details on an attached sheet.*

Have any owners, officers, directors, guarantors, general partners, stockholders or limited partners owning 20% or more of the Borrower ever been charged with, or convicted of, any criminal offense, other than minor motor vehicle violations?  
Yes  No

Has the Borrower or management of the Borrower been informed of any current or on-going investigation of the Borrower with respect to possible violations of state or federal securities laws? Yes  No

Has the Borrower or any owners, officers, directors, guarantors, general partners, stockholders of limited partners owning 20% or more of the Borrower been in receivership or adjudicated as bankrupt? Yes  No

Is the Borrower or any of its owners, officers, directors, guarantors, general partners, stockholders or limited partners owning 20% or more of the Borrower involved in any pending lawsuits? Yes  No

Does the Borrower or any guarantors owe past due federal, state or local taxes of any nature? Yes  No

IN WITNESS WHEREOF, Borrower and Guarantor(s) have caused this Agreement to be duly executed as of the date first above written.

\_\_\_\_\_  
**Borrower (Type or Print name of borrowing entity)**

By: \_\_\_\_\_  
Authorize signer for Borrower

Name: \_\_\_\_\_  
Type or Print name of authorized signer

Title: \_\_\_\_\_

**Guarantors:**  
**(each Guarantor must sign)**

\_\_\_\_\_  
\_\_\_\_\_

If applicable

**Corporate Guarantor**

**Name**

By: \_\_\_\_\_  
Title