SMALL BUSINESS COLLATERAL ENHANCEMENT PROGRAM
COLLATERAL ENHANCEMENT AGREEMENT FOR CREDIT UNIONS

This **COLLATERAL ENHANCEMENT AGREEMENT FOR CREDIT UNIONS** (Enhancement Agreement), is made effective as of _____, by and between the State of Ohio Development Services Agency (**Development**) and _____ (**Lender**).

Background Information

A. Pursuant to the provisions of the Small Business Jobs Act of 2010 (Title III of the Small Business Jobs Act of 2010, Public Law 111-240, 124 Stat. 2568, 2582), the United States Congress appropriated funds to the United States Department of the Treasury to be allocated and disbursed to states that have created programs to increase the amount of capital made available by private lenders to small businesses.

B. On September 2, 2011, Development entered into the State Small Business Credit Initiative Allocation Agreement with the United States Department of the Treasury to administer the State Small Business Credit Initiative funds for the creation and operation of the Small Business Collateral Enhancement Program (Collateral Enhancement Program), a collateral support program designed to enhance the collateral of commercial loans made to small businesses.

C. Lender desires to receive a Collateral Enhancement, as defined herein, from the Collateral Enhancement Program, and Development has determined that Lender is eligible to receive Collateral Enhancement from the Collateral Enhancement Program on the terms and subject to the conditions of this Enhancement Agreement.

D. Lender desires to receive a Collateral Enhancement from the Collateral Enhancement Program for the loan made to _____ (Borrower) for the project described as _____.

E. Lender acknowledges the Collateral Enhancement Program contains certain requirements established by the State Small Business Credit Initiative Allocation Agreement.

F. Upon the execution and delivery of this Enhancement Agreement by Lender and Development, Lender shall be eligible to receive an Allocation from the Fund for payment of a Claim made pursuant to this Enhancement Agreement.

Provisions

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the parties agree as follows:

Section 1. Definitions. In addition to the words and terms defined elsewhere in this Enhancement Agreement, each of the following words and terms as used in this Enhancement Agreement shall have the following meaning unless the context or use indicates another or different meaning or intent, and such definition shall be equally applicable to both the singular and plural forms of the terms as the content may require:

(a) "Development" means the Ohio Development Services Agency or its successor agency.

(b) "Allocation" means the allocation made by Development for the Lender in the Fund for the purpose of this Enhancement Agreement.

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(c) "Allocation Agreement" means the State Small Business Credit Initiative Allocation Agreement dated September 2, 2011, between the Ohio Development Services Agency and the United States Department of the Treasury.

(d) "Claim" means any claim filed by the Lender pursuant to Section 9.1 of this Enhancement Agreement.

(e) "Collateral Enhancement" the percentage of the Lender Loan reserved by Development in the Fund as an Allocation pursuant to this Enhancement Agreement.

(f) "Director" means the Director of the Ohio Development Services Agency or its successor agency.

(g) "Eligible Use of Proceeds" means loans used commercial owner occupied real estate, expansions or renovations, equipment purchases, leasehold improvements, lines of credit for working capital, inventory purchases, rolling stock, refinancing of another lender's debt, startup costs, franchise financing or other business purposes.

(h) "Financial Institution" means any insured credit union, as defined in Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702), that is not operating under any supervisory enforcement and no Principal of the Lender has been convicted of a sex offense against a minor.

(i) "Fixed Assets" means tangible personal and real property used by the Borrower in the operation of its business, but not expected to be consumed or converted into cash in the ordinary course of events.

(j) "Fund" means the State Small Business Credit Initiative Fund.

(k) "Loan" means the Lender loan made to the Borrower.

(l) "Principal" means if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

(m) "Collateral Enhancement Program" means the Small Business Collateral Enhancement Program created by the State Small Business Credit Initiative Allocation Agreement.

(n) "Working Capital" means funds used by a Borrower to finance its business operations and which are generally not secured by Fixed Assets.

Section 2.1. Representations - by Development. Development represents and warrants that:

(a) Development is an agency within the State of Ohio. Development has the power and authority to enter into and perform its obligations under this Enhancement Agreement;

(b) Except as disclosed in writing to the Lender or provided by law, no consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this

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Enhancement Agreement by Development or the performance of any of its obligations under this Enhancement Agreement; and

(c) Upon receipt by Development of documentation verifying the closing of the Loan by Lender, Development shall notify Lender of the Allocation made for the benefit of Lender pursuant to the terms of this Agreement.

Section 2.2. Representations by the Lender. The Lender represents and warrants to Development that:

(a) The Lender is a validly organized Financial Institution registered to do business in the State of Ohio with the power and authority to enter into and perform its obligations under this Enhancement Agreement;

(b) The execution and performance of this Enhancement Agreement by Lender has been duly authorized by proper action of Lender and will not violate or conflict with any agreement, instrument by which the Lender is bound.

(c) To the best of its knowledge, Lender is in compliance with all federal, state, and local laws, rules, and regulations to which Lender is subject and there are no regulatory, enforcement or other actions, suits or proceedings pending or threatened against Lender which, if adversely determined, would individually or in the aggregate impair the ability of Lender to participate in the Program or perform its obligations under this Enhancement Agreement.

(d) The Loan submitted by Lender to Development for participation in the Collateral Enhancement Program shall be valid, binding and enforceable obligations of the Borrower. Lender shall document the Loan in a legally sound manner, which may include a loan agreement containing a confession of judgment, a promissory note containing a cognovit provision and confession of judgment, and security documents such as a mortgage or security agreement and properly filed Uniform Commercial Code financing statements, as the Lender deems appropriate and necessary to support the enforcement and collection of the loan obligation.

(e) The individual executing this Enhancement Agreement on behalf of Lender has been duly authorized and empowered to obligate Lender to the terms of this Enhancement Agreement.

(f) The certifications and representations made in the Lender's Collateral Enhancement Program Lender Application remain true and correct.

(h) The only recipient of the Lender Loan is the Borrower identified and described in this Enhancement Agreement

(i) Lender has received the signed Collateral Enhancement Program Borrower's Information and Certification Form attached hereto as **Exhibit 1**.

(j) The Lender Loan will be used for an Eligible Use of Proceeds.

(k) Upon closing of the Loan, the Lender shall have good and marketable title to the Note subject to no encumbrance or liability, and except as created by this Enhancement 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.

(l) 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

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security interest in all collateral securing the Loan and not assign Lender's interest in the Loan and collateral to another party.

(m) The Loan is not a refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender.

(n) No Principal of the Lender has been convicted of a sex offense against a minor.

(o) Within the context of the objectives of the Collateral Enhancement Program, Lender will exercise reasonable care and diligence in the making and collection of the Loan.

(p) The Loan shall be valid, binding and enforceable obligations of the Borrower. Lender shall document Loan in a legally sound manner, which may include a loan agreement containing a confession of judgment, a promissory note containing a cognovit provision and confession of judgment, and security documents such as a mortgage or security agreement and properly filed Uniform Commercial Code financing statements, as the Lender deems appropriate and necessary to support the enforcement and collection of the Loan obligation.

(q) Prior to submission of a Claim to Development for payment from the Allocation, Lender shall take all reasonable and prudent steps to exhaust all of its rights and legal remedies to collect the Loan, including, but not limited to, obtaining a judgment, foreclosure, deed in lieu of foreclosure, exercising rights under an assignment of rents or repossession of collateral, and enforcement of corporate and/or personal guarantees.

(r) Lender has or 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 Development 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.

(s) Lender shall make available to the Treasurer Inspector General all books and records related to the Loan and the use of the Collateral Enhancement and the Allocation, subject to the Right to Financial Privacy Act, 12 U.S.C § 3401, et. seq.), including detailed Loan records.

Section 3.1. Responsibilities of the Parties The Director and Lender each agrees to be responsible for its respective performance of the obligations or activities in furtherance of this Enhancement Agreement. No member, officer or employee of Development, including any person executing this Enhancement Agreement, shall be personally liable under this Enhancement Agreement or subject to any personal liability for any reason relating to the execution of this Enhancement Agreement or the Program. The liability of the State of Ohio and Development to Lender is limited to the balance in the Allocation maintained by Development for Lender. Lender shall save and hold harmless the State of Ohio, Development and their officers, employees and agents from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of Lender or its agents or employees in connection with this Enhancement Agreement and the Collateral Enhancement Program.

Section 3.2. Relationship between Parties. The Lender, and its officers, directors, agents and employees shall not describe or represent themselves as agents of the State of Ohio, the United States Department of the Treasury to any person, firm or entity for any purpose.

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Section 4.1. The Lender Loan. Borrower is receiving the following Loan from the Lender, dated on or about the date of this Enhancement Agreement:

Principal Loan Amount: _____ Dollars ($_____) (the "Original Principal")

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

_____ Term Loan. A term loan (fixed amount with specified repayment schedule (the "Term Loan")) with the expiration date of _____ and an interest rate of _____%; or a

_____ Line of Credit. A line of credit (open line of credit allowing for cycles of advances and repayment) with the expiration date of_____ and an interest rate of _____%; or a

_____ Other Loan Type. A _____ loan (the "Other Loan Type") with the expiration date of _____ and an interest rate of _____%.

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 Enhancement Agreement, including all Appendices, and any permitted amendments thereto, collectively, the "Loan Documents") The original Loan Documents shall be retained by the Lender, and evidence of loan closing shall be forwarded to Development upon execution.

Section 4.2. Administration of Loans, Generally.

(a) Upon request, Lender shall provide Development with any additional documents in its possession or control arising out of, or related to, the Loan or the Loan Documents.

(b) Lender shall disclose to the Borrower and any co-maker, guarantor, endorser, other debtor or obligor of the Loan, of the existence of this Enhancement Agreement in connection with the making and servicing of the Loan and collecting payments to be made by the Borrower. 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) Lender shall provide all detail reasonably requested by Development regarding the breakdown of individual payments, credits, fees, or other charges against the Loan, including without limitation, itemization of the foregoing items.

(d) Lender may amend the terms and conditions of the Loan Documents without the consent of Development, provided however, the Lender may not, without the express prior written approval of Development, by amendment or otherwise: (i) amend any of the Lender certifications made in the Collateral Enhancement Program Lender Application or the Collateral Enhancement Program Borrower's Information and Certification Form, or (ii) waive or release any claim against any Borrower or any co-maker, guarantor, endorser, other debtor or obligor of the Loan; or (iii) consent to any release, substitution, or exchange of collateral, except (a) sales of inventory in the ordinary course of business or (b) sales, substitution and exchange of worn or obsolete equipment in the ordinary course of business.

Section 4.3. Administration of Lines of Credit.

(a) If the Loan is a line of credit then during the term of this Enhancement Agreement, the line of credit may continue as a Collateral Enhancement Program Loan for up to thirty-six (36) months after the loan is made to Borrower. Extensions of the line of credit within such thirty-six month (36) period will not require separate applications for the Collateral Enhancement Program or payment of additional

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Collateral Enhancement Program fees. If a line of credit is extended by a Lender for more than thirty-six (36) months, such extension shall be considered a new loan for which an application for the Collateral Enhancement Program and payment of the Collateral Enhancement Program closing fee will be required under Section 5.4 of this Agreement .

(b) For the purposes of this Enhancement Agreement, fluctuations in the outstanding balance of a line of credit shall not be deemed to be a refinancing of the Collateral Enhancement Program Loan.

Section 5.1. Collateral Enhancement Program Allocation. Upon receipt of the fully executed Enhancement Agreement and payment of the fee required in Section 5.4, Development shall establish the Allocation.

Section 5.2. Amount of Allocation. On or after the closing of the Loan, Development shall establish the Allocation in the following amount: _____Dollars ($_____)[1] (the "Initial Allocation"). The Initial Allocation which is _____ percent (___%) of the Loan, and any reductions thereto as provided in this Enhancement Agreement, is to be maintained in the Fund.

Section 5.3. Collateral Enhancement Program Allocation as Security.

(a) For a Term Loan, the Allocation made for the Term Loan is limited to the amount of the Original Principal, as defined in Section 4.1 of this Enhancement Agreement, that is disbursed under the Term Loan, subject to the reductions provided for in Section 5.5 below, but in no event shall the Allocation be made to cover any amount in excess of the Original Principal amount or the amount of the Initial Allocation.

(b) For a Line of Credit, the Allocation made for the Line of Credit is limited to an amount not to exceed the lesser of: (i) the Initial Allocation as set forth in Section 5.2 of this Agreement or (ii) _____ percent ___._ %) of the outstanding principal amount of the Line of Credit.

Section 5.4. Fees to Agency. A Collateral Enhancement Program closing fee equal to two percent (2%) of the Initial Allocation is required. This fee shall be sent by the Lender to Development at the time of the closing of the Loan. The Lender may cause the Borrower to pay the Collateral Enhancement Program closing fee. The fee may come from Loan proceeds.

Section 5.5. Agency Access to Allocation. Except as otherwise provided in Section 9.5 of this Enhancement Agreement, Lender agrees that on an annual basis, Development shall release from Lender's Initial Allocation for each Term Loan an amount equal to the aggregate payments or other credits applied against the Term Loan principal balance for the preceding year multiplied by _____ and _____ percent (____.__%). Development shall notify the Lender of such reductions no later than February 28th of each year.

Nothing in this Section shall be deemed to imply or impose upon Development any obligation to increase the amount of the Allocation.

Section 5.6. Allocation Purpose. The Allocation may only be used for the purpose of the Lender recovering a Claim after approval by the Director.

Section 6.1. Loan Activity Notification. The Lender shall (a) promptly notify Development in writing (and describe in reasonable detail) of any breach of any representation or warranty of the Lender in this Enhancement Agreement, including any breach of any representation or warranty of the Borrower under the Loan Documents.

[1] This amount shall be _____ percent ___%) of the Loan calculated on the shortfall of collateral for the Loan. The shortfall shall be determined based on third party appraisals and/or other valuations.

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Section 6.2. Other Loans by Lender. Development 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 (all such collateral is referred to as the "Additional Collateral") and the Lender shall sell or liquidate the Additional Collateral and apply the gross proceeds thereof to the Loan prior to requesting a draw from the Allocation to repay the Loan. If, and only to the extent that, the proceeds from the sale or liquidation of all of the Additional Collateral are not sufficient to repay in full the amount due under the Loan, then the Lender may request a draw from the Allocation to repay the Loan up to the amount of any such shortfall in accordance with the procedures set forth in Section 8.1 below.

Section 7. Term. This Enhancement Agreement shall continue until the expiration date in Section 4.1 or until payment of a Claim in accordance with Section 9.5 of this Enhancement Agreement, whichever comes first.

Section 8.1. Default by the Lender. The occurrence of any one or more of the following events or conditions shall constitute an Event of Default by the Lender under this Enhancement Agreement, unless a written waiver of the default is signed by Development:

(a) Any representation or warranty made by the Lender under this Enhancement 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, including but not limited to the failure to file required reports, under this Enhancement Agreement which is not cured by the Lender to the satisfaction of Development within thirty(30) calendar days after written notice thereof by Development 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.

Section 8.2. Remedies of Development. Upon the occurrence of any one or more of Event of Default by the Lender which remains uncured following notice from Development to the Lender and the applicable cure period under this Enhancement Agreement, in addition to all rights and remedies created by this Enhancement Agreement, Development shall be entitled to pursue and enforce all rights and remedies available to Development, legal and equitable, including without limitation, the right of termination, recoupment, and the right to require the Lender's books and records related to the Loan, Loan Documents and this Enhancement Agreement to be separately audited by an independent certified public accountant selected by Development, at Development's sole cost and expense. Provided however, in the event the audit reveals a breach of this Enhancement Agreement or the Loan Documents has occurred, the Lender shall reimburse Development 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 of Default by the Lender under this Enhancement 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 attorney's fees and expenses incurred by Development in enforcing any obligation of the Lender arising from or under the Loan, any of the Loan Documents, or this Enhancement Agreement.

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Section 8.3. Default by Development. The occurrence of any one or more of the following events or conditions shall constitute an Event of Default by Development under this Enhancement Agreement, unless a written waiver of the default is signed by the Lender:

(a) Development fails to make an Allocation for the Lender in the amount set forth in Section 5.2 of this Agreement within thirty (30) days of verification of the Loan closing; or

(b) Any material breach by Development of any duty or obligation of Development under this Enhancement Agreement which is not cured by Development to the satisfaction of the Lender within thirty (30) calendar days after written notice thereof by the Lender to Development.

Section 8.4. Remedies of the Lender. Upon the occurrence of any one or more of Event of Default by Development which remains uncured following notice from the Lender to Development and the applicable cure period under this Enhancement Agreement, the Lender may exercise one or more of the following remedies:

(a) Specific Performance. Seek specific performance by Development of its obligations under this Enhancement Agreement.

(b) Other Legal Remedies. Pursue any other legal remedies the Lender may have under this Enhancement Agreement or applicable law.

Section 8.5. Effect of Termination. Upon the expiration or other termination of this Enhancement Agreement, the Lender shall continue to submit Annual Reports as described in Section 10.1 of this Enhancement Agreement until the Claim is paid or the Collateral Enhancement Program Loan is paid in full.

Section 9.1. Prior to Submission of Claim. After Borrower's default on the Loan Agreement, but prior to submitting any claim against the Allocation, Lender shall undertake to collect account as further described in Section 2.2(q) of this Enhancement Agreement. If Lender determines in a commercially reasonable manner and consistent with the Lender's normal practice for managing its commercial loans that all or any portion of the Loan is uncollectible, after exhausting liquidation, rents or other repossession proceeds, Lender may submit a Claim to Development for a release of the Allocation as described in Section 9.2. The Claim must be submitted to Development within one hundred twenty (120) days of the date Lender determines the Loan is uncollectible. The Claim shall be submitted in the form then required by Development. Lender may not submit more than one Claim for the Loan.

Section 9.2. Amount of Claim. Lender's Claim may only include the lesser amount up to the Original Principal as defined in Section 4.1 of this Enhancement Agreement or the amount of principal then outstanding at the time of the default, subject to the amount of the Initial Enhancement and percentages as set forth in Sections 5.2 and 5.3 of this Enhancement Agreement. The amount of principal included in the Claim may not exceed the Original Principal covered by the Collateral Enhancement Program.

Section 9.3. Withdrawal from the Allocation. Promptly after receipt of a Claim, Development shall review the Claim. Lender shall provide such supporting documentation for the Claim as Development may request. The Director shall notify Lender in writing of his determination to approve or deny any Claim. If approved, Development shall withdraw from the Allocation the approved amount of the Claim. The Claim amount shall be sent to the Lender to apply to the balance of the Loan. Any denial shall state in reasonable detail the reason for the denial.

Section 9.4. Limitation of Claim Recovery. No Claim shall be made for an amount that exceeds then-current balance of the Allocation. Lender shall have no right to receive or claim from the Director, Development or the State of Ohio any amount in excess of the balance of the Allocation.

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Section 9.5. Remaining Balance. If the Allocation has a remaining balance after a claim is paid or after the Loan is paid off, the Lender expressly releases any rights in and to the balance of the Allocation and Development will reallocate the remaining balance.

Section 9.6. Subrogation. The Director shall be subrogated to the rights of Lender in collateral, personal guarantees, and all other forms of security for the Loan that have not been realized by Lender under the following circumstances: (a) Lender's losses have been fully or partially covered by payment of a Claim or by a combination of payment of a Claim and recovery from the Borrower, liquidation of collateral, or from other sources; and (b) Lender has stated to the Director that Lender will not take action on any remaining available sources of collateral or other security or sources for recovery. The Director may, but shall not be obligated to, take action to recover the amount of any Claim from such remaining sources of collateral or other security or sources for recovery. Thereafter, at the request of the Director, Lender shall execute an Assignment Agreement that assigns to the Director any and all right, title or interest to any collateral, security, or other right of recovery in connection with the Loan. The Assignment Agreement shall be in form and substance acceptable to the Director and his counsel. If such assignment has been made, the Director shall not be required to undertake any obligations of Lender pursuant to its loan documents, except for any obligations directly related to the exercise by the Director of the assigned rights of recovery in connection with the Loan. Lender agrees that it will fulfill any other obligations it may have under the loan documents in the same manner and to the same degree as required had the assignment not been made. Lender shall provide the Director with all reasonable assistance after assignment as the Director may request in proceeding with respect to any such collateral, security or other right of recovery, except that such reasonable assistance shall not require Lender to incur any out-of-pocket expenses. Any funds received by the Director as a result of enforcement actions taken with respect to any such collateral, security or other right of recovery shall be deposited by Development into the Fund.

Section 9.7. Collateral. Except upon the exercise of the Director's right of subrogation as set forth in Section 9.6 of this Enhancement Agreement, neither the Director nor the State of Ohio shall have any legal or equitable interest in any collateral, security, or other right of recovery in connection with the Loan.

Section 10.1. Annual Summary Reports. On or before the 31st day of January, the Lender shall submit to Agency a report of the outstanding balance of the Loan, any additional funding the Borrower received from Lender or other private sources, as a direct result of the Collateral Enhancement Program and delinquency or charge-off of the Loan in the immediately preceding calendar year.

Section 10.2. Late Reporting. Performance reports are essential for Development's effective administration of the Collateral Enhancement Program and its incentive programs, generally. If Lender fails to submit any report required in Section 10.2 and such breach continues uncured for more than thirty (30) days, Development may recover, and Lender shall pay, as liquidated damages for the breach, an amount equal to the greater of ten percent (10%) of the principal of the Allocation or $500.00 for each month or part of a month the report(s) is past due. Such amount shall be due and payable from Lender to Development within thirty (30) days after written notice from Development.

Section 10.3. Forms. Reports required under this Section shall be substantially in the form(s) of **Exhibit 2** attached hereto.

Section 11.1. Public Records. Lender acknowledges that this Agreement and other records in the possession or control of Development regarding the Collateral Enhancement Program are public records under Section 149.43 of the O.R.C. and are open to public inspection unless a legal exemption applies. Lender's non-public financial information may be exempt from disclosure under a trade secret exception to the public records law.

Section 11.2. Trade Secrets. Ohio has adopted the Uniform Trade Secrets Act, which prohibits the disclosure of information determined to be a "trade secret" as defined in Section 1333.61(D) of the O.R.C. Any information

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submitted to Development shall be considered public information and shall be released if requested unless such information is determined to be a "trade secret." Any information submitted to Development which is considered by Lender to be a "trade secret" must be clearly marked as such. Every report, deliverable or other submission containing "trade secret" information must contain a page that lists each page in the submission where trade secret information appears and the number of occurrences of trade secret information on that page, identify each and every occurrence of the information within the submission with an asterisk before and after each line containing the trade secret information and underline the trade secret information itself.

Section 11.3. Maintenance of Files. Lender shall maintain for at least three (3) years after the final Loan subject to this Enhancement Agreement is either repaid by the Borrower or written off by the Lender. Notwithstanding the foregoing, Lender shall maintain records for each Loan for a period of three (3) years after it has been repaid or written off. In the event of a dispute, all records relevant to the dispute shall be maintained until the dispute is resolved.

Section 11.4. Inspection of Files. Upon notice to the Lender, Development may inspect the files of the Lender relating to the Collateral Enhancement Program, during normal business hours of the Lender. Development will not copy or extract any information from such files unless (a) the information is eligible for protection from disclosure pursuant to applicable federal or state statutes, in which case Development agrees to invoke the confidentiality provisions of the statute or (b) if such information cannot be protected, the consent of the Borrower has been obtained. Notwithstanding the foregoing, this Section is not intended to limit or preclude the ability of Development to exercise its right of subrogation, or to defend itself in any legal action commenced against Development by the Lender or any Borrower.

Section 11.5. U.S. Treasury Inspector General. The Lender agrees to make available to the Inspector General for the United States Department of the Treasury all books and records related to the Loan, subject to the Right to Financial Privacy Act (12 U.S.C. § 3401 *et seq*.).

Section 11.6. External Audit. Development may select an outside auditor to audit not more often than annually the Lender's files for loans and other documents under the Collateral Enhancement Program. Development shall be responsible for the expenses and costs of the outside auditor under this section.

Section 11.7. Reports of Regulatory Agencies. The Lender consents to the transmittal to Development, by any financial institutions regulatory agency of the federal or state governments, any information directly relating to the Lender's participation in the Collateral Enhancement Program. To the extent permitted by law, Development shall hold any information acquired pursuant to this Section confidential.

Section 11.8. Adherence to State and Federal Laws and Regulations.

(a) Lender shall comply with all applicable federal, state, and local laws in the performance of Lender's obligations under this Enhancement Agreement, as long as Lender has any obligation to Development under this Enhancement Agreement. Without limiting the generality of such obligation, Lender shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholding, social security withhold, and any and all other taxes or payroll deductions required for all employees engaged by Lender in connection with the Collateral Enhancement Program.

(b) In accordance with Executive Order 2011-03K, Lender, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2011-03K, (2) has reviewed and

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understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 *et seq*., §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time. Lender understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of this Enhancement Agreement and the grant of funds made pursuant to this Enhancement Agreement and may result in the loss of other contracts or grants with the State of Ohio.

(c) No personnel of Lender, contractor of Lender or personnel of any such contractor, and no public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under this Enhancement Agreement, shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under this Enhancement Agreement. Lender shall immediately disclose in writing to Development any such person who, prior to or after the execution of this Enhancement Agreement, acquires any personal interest, voluntarily or involuntarily. Lender shall cause any such person who, prior to or after the execution of this Enhancement Agreement, acquires any personal interest, voluntarily or involuntarily, to immediately disclose such interest to Development in writing. Thereafter, such person shall not participate in any action affecting the work under this Enhancement Agreement unless Development determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

(d) Lender represents and warrants to Development that Lender does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State of Ohio; (2) any moneys to the State of Ohio or a state agency for the administration or enforcement of any environmental laws of the State of Ohio; and (3) any other moneys to the State of Ohio, a state agency or a political subdivision of the State of Ohio that are past due, whether or not the amounts owed are being contested in a court of law.

(e) Lender represents and warrants to Development that Lender has made no false statements to Development or any of its employees or agents in the process of obtaining this Enhancement Agreement. Lender acknowledges that any person who knowingly makes a false statement to obtain an award of financial assistance may be required under Ohio Revised Code § 9.66(C) to repay such financial assistance and shall be ineligible for any future economic development assistance from the State of Ohio, any state agency or a political subdivision. In addition, any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code § 2921.13(F)(1).

(f) If applicable, Lender must certify compliance with Section 2909.33 of the O.R.C., the Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization.

Section 12. Notices. All notices, certificates, requests or other communications shall be deemed given when delivered by messenger, by professional courier service or by registered or certified mail postage prepaid, return receipt requested, addressed as follows:

If to Development: Ohio Development Services Agency
Office of Business Assistance
77 South High Street, 24th
Columbus, Ohio 43215-6130
Attn: Manager, Collateral Enhancement Program

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If to the Lender: _____

_____

_____

Section 13.1. Governing Law. This Enhancement Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

Section 13.2. Forum and Venue. Lender irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Columbus, Ohio, in any action or proceeding arising out of or related to this Enhancement Agreement, Lender agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Lender irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Enhancement Agreement shall limit the right of Development to bring any action or proceedings against Lender in the courts of any other jurisdiction. Any actions or proceedings by Lender against Development or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to this Enhancement Agreement shall be brought only in a court in Columbus, Ohio.

Section 13.3. Entire Agreement. This Enhancement Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of this Enhancement Agreement.

Section 13.4. Severability. Whenever possible, each provision of this Enhancement Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Enhancement Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Enhancement Agreement.

Section 13.5. Amendments. This Enhancement Agreement may not be amended or modified except upon such terms as both parties may agree in a writing executed by authorized representatives of each party.

Section 13.6. Forbearance Not a Waiver. No act of forbearance or failure to insist on the prompt performance by Lender of its obligations under this Enhancement Agreement, either express or implied, shall be construed as a waiver by Development of any of its rights under this Enhancement Agreement or applicable law.

Section 13.7. Pronouns. The use of any gender pronoun shall be deemed to include the other gender, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

Section 13.8. Headings. Section headings contained in this Enhancement Agreement are inserted for convenience only and shall not be used in construing this Enhancement Agreement.

Section 13.9. Assignment. Neither this Enhancement Agreement nor any rights, duties, or obligations of Lender pursuant to this Enhancement Agreement shall be assigned by Lender without the prior express written

SAMPLE

consent of Development, which shall not be unreasonably withheld. Any purported assignment not made in accordance with this paragraph shall be void.

Section 13.10. Limitation of Rights. This Enhancement Agreement shall be for the exclusive benefit of the Lender and Development, and shall not be construed to give any other person any legal or equitable right, remedy or claim with respect to the Agreement.

Section 13.11. No Personal Liability. No member, officer or employee of Development, including any person executing this Enhancement Agreement, shall be liable personally under this Enhancement Agreement or subject to any personal liability for any reason relating to the execution of this Enhancement Agreement or the Collateral Enhancement Program.

Section 13.12. Binding Effect. Each and all of the terms and conditions of this Enhancement Agreement shall extend to and bind and inure to the benefit of Lender, its successors and permitted assigns.

Section 13.13. Survival. Any provision of this Enhancement Agreement which, by its nature, is intended to survive the expiration or other termination of this Enhancement Agreement, including, without limitation, any indemnification obligation, shall so survive and shall benefit the parties and their respective successors and permitted assigns.

Section 13.14. Counterparts; Facsimile/Pdf Signatures. This Enhancement Agreement may be signed in counterparts and delivered by facsimile or by pdf, and in any such circumstances, shall be considered one document and an original for all purposes.

Signature: Each of the parties has caused this Enhancement Agreement to be executed by its authorized representatives as of the dates set forth below their respective signatures effective as of the Effective Date:

Ohio Development Services Agency

Christiane Schmenk

Director

By: _____

Print Name: _____

Title: _____

[Lender]

By: _____

Print Name: _____

SAMPLE

Title: _____

Exhibit 1 - Borrower's Information and Certification Form
Exhibit 2 – Reporting Form

BORROWER'S ACKNOWLEDGEMENT OF COLLATERAL ENHANCEMENT AGREEMENT

The undersigned has the requisite authority and power to sign below on behalf of the Borrower and Borrower acknowledges, and accepts, the terms and conditions set forth in this Enhancement Agreement.

Borrower shall take all action necessary to cause the terms and conditions in this Enhancement 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 to Development or its successors.

NAME OF BORROWER: _____

_____
Authorized Signer
Title: _____
Date: _____

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