

**MONTANA BOARD OF INVESTMENTS LOAN SERVICING AGREEMENT**

**THIS AGREEMENT** is made and entered into as of \_\_\_\_\_  
20\_\_\_\_, by and between \_\_\_\_\_  
(the Lender) and the Board of Investments (the Board).

**WITNESSETH**

**WHEREAS**, the Board is an agency of the State of Montana; and

**WHEREAS**, the Board in fulfilling its responsibility to administer the Coal Tax Trust Fund, Teacher’s Retirement System Fund, and the Public Employees’ Retirement System Fund, has adopted a Policy to implement a Loan Participation Program, through which program the Board will participate with approved financial institutions to make financing available to Montana businesses; and

**WHEREAS**, the Lender is an approved financial institution for purposes of the Board’s programs; and

**WHEREAS**, the Lender is a \_\_\_\_\_duly organized and existing under the laws of \_\_\_\_\_; and with its principal office at \_\_\_\_\_; and

**WHEREAS**, the Lender has offered the Board an opportunity to participate in certain loans secured by liens on real property and/or security interests in tangible personal property and the Board has evidenced an interest in acquiring a participating interest in such loans and the collateral security for said loans; and

**WHEREAS**, the Lender and the Board agree that if the Board decides to participate in a Loan offered by the Lender such participation shall be upon the terms and conditions set forth herein; and

**WHEREAS**, the Lender and the Board are both authorized to enter into this Agreement for the purpose of defining each party’s rights and obligations under the Loan Participation Program;

**NOW THEREFORE**, in consideration of the foregoing, the mutual covenants and conditions contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree and covenant as follows:

**Section 1.01. Definitions.** The following words and terms have the following respective meanings:

(1) “Act” means the “Montana In-State Investment Act of 1983”, Montana Code Annotated, Title 17, Chapter 6, Part 3 and all amendments thereto.

(2) “Borrower” means the person or entity to whom a Participation Loan is made by the Lender.

(3) “Collateral” means the property, which is or at any time becomes subject to a Security Agreement.

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(4) “Commercial Loan Policy” means that written document, approved by the Board, identifying the guidelines which the Board will consider issuing a Commitment Letter.

(5) “Commitment Letter” means that written document, originated by the Board specifying the terms and conditions under which the Board will participate in a specific loan with the lender.

(6) “Forward Commitment” means that written document, issued by the Board to the lender, reserving a specific interest rate and dollar amount for a specific time with the Board.

(7) “Loan Agreement” means the loan agreement between the Borrower and the Lender setting forth the terms and conditions applicable to a Participation Loan.

(8) “Loan Documents” mean the Security Agreement, the Loan Agreement, the Note, UCC Financing Statements, ALTA Extended Mortgagee Title Insurance and other documents and instruments evidencing, securing, guaranteeing or otherwise pertaining to a Participation Loan.

(9) “Note” means the promissory note executed by a Borrower evidencing a Participation Loan, naming the Lender as payee and setting forth the terms of the obligation, in a form acceptable to the Board.

(10) “Participation Certificate” means the certificate, substantially in the form of Exhibit A hereto, executed by the Lender and accepted in writing by the Board setting forth the amount of a Participation Loan, the Lender’s and the Board’s respective shares thereof, the respective interest rates applicable thereto and the Lender’s service fee.

(11) “Participation Loan” means any loan in which a Participation Certificate has been issued by the Lender and accepted in writing by the Board.

(12) “Participation”, “Participation Percentage”, “Participation Interest” or words of like import mean the Board’s undivided interest in and ownership of a percentage of a Participation Loan as evidenced by the Participation Certificate issued by the Lender with respect to such Participation Loan.

(13) “Project” means the land, building, equipment, fixtures, furnishings and personal property or any one or more of the foregoing financed by a Participation Loan.

(14) “Security Agreement” means an agreement granting a lien or security interest in real or personal property as security for a Participation Loan whether in the form of a mortgage, deed of trust, trust indenture, security agreement or other instrument.

(15) “Tangible Personal Property” means all equipment, machinery and personal property that are a part of a Project.

(16) “Value-Added Loan” means any loan to a “value-added” business as defined in the Commercial Loan Policy that meets the criteria pursuant to 17-6-317.

**Section 1.02. Exhibits.** Attached to and by reference made a part of this Agreement are: Exhibit A, the form of the Participation Certificate, Exhibit B, the form of the Participation Report.

**Section 1.03. Rules of Interpretation.** This Agreement shall be interpreted in accordance with and governed by the laws of the State of Montana and venue therefore shall be in the First Judicial District in Lewis & Clark County.

**Section 2.01. Purpose.** This Agreement shall govern the rights, interests and obligations of the Lender and the Board with respect to all Participations purchased by the Board from the Lender hereunder, except insofar as the terms hereof shall be modified, amplified or

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amended by the terms of the Participation Certificate issued with respect to a particular Participation Loan. This Agreement shall also govern the servicing obligation of the Lender with respect to Participation Loans.

**Section 2.02. Processing of Participation Loan.** The Board shall not in any event take part in or be responsible for the negotiations with the Borrower leading to the consummation or Participation of a loan, unless requested by the lender and in the presence of the lender.

**Section 3.01. Submission of Information.** The Lender shall provide the Board with sufficient information to enable the Board to determine whether the loans offered for participation conform to the policies, rules, and regulations of the Board.

**Section 3.02. Requirement of Loan.** (1) Any loan to be participated in by the Board shall be evidenced by a Note and a Loan Agreement (if required by the lender or the Board) executed by the Borrower and the Lender in the form approved by the Board. To secure such Note, the Borrower shall execute and deliver to the Lender, and the Lender shall record appropriate Security Agreements including but not limited to those specified hereafter in a form approved by the Board:

(a) if the Project includes real property or buildings, an appropriate Security Agreement granting a lien thereon and a mortgagee's title insurance policy in the current form of American Land Title Association (ALTA) Loan Policy with Extended Coverage, or equivalent, including mechanics' lien and (if available) zoning coverage, issued by a title company satisfactory to the Board, insuring in the amount of such loan the Lender's interest under the Security Agreement as the holder of the mortgage lien of record on such real property, subject to only such exceptions as are acceptable to the Board;

(b) if the Project involves the Borrower having an interest as lessor or as lessee under one or more leases of real, personal or mixed property, an assignment of the Borrower's interest in such leases;

(c) UCC financing statements as required to perfect a security interest in the Collateral; and

(d) such other appropriate instruments as required by the Board.

(2) Any loan must contain a Due on Sale provision in the Loan Documents that all principal and interest payments due under such loan may be accelerated if the Borrower rents, sells or otherwise transfers an interest in the property, including chattel property, or ceases to utilize any of the property for the purpose of which such loan was made.

**Section 3.03. Commitment to Participate.** Upon approval by the Board of an application submitted by the Lender to the Board in accordance with the Loan Policy of the Board, the Board shall issue to the Lender a Commitment Letter setting forth the terms and conditions under which it will participate in a loan.

**Section 3.04. Payment and Delivery of Documents for Loan Participation.** Upon receipt of a Participation Certificate executed by the Lender stating among other things that the Note and other necessary Loan Documents have been fully executed by the Borrower and recorded by the Lender, the Board shall execute the Certificate and pay to the Lender in the case of a loan participation an amount equal to 100 percent of the Board's Participation Interest as first set forth in the Commitment Letter and as shown in the Participation Certificate. The Lender shall deliver to the Board a complete set of the Loan Documents as required by Schedule

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A of the Commitment Letter. The review of all loan documents or documents required under the Commitment Letter by the Board does not constitute the concurrence by the Board of the accuracy, validity or legality of the documents presented as required by the Commitment Letter.

### **Section 3.05. Determination of Interest Rate to be Charged for Participation Loans.**

At the time the Board issues its Forward Commitment to reserve funds to purchase a participation in a commercial loan, it will specify the current interest rate of the Board, established in accordance with its Loan Policy. The interest rate charged by the Lender on a loan participated in by the Board shall be specified in the Board's Commitment Letter. An interest rate reduction may be available for qualified borrowers under the Commercial Loan Policy. Board and Lender interest rates charged for Value-Added Loans are set by law.

**Section 3.06. Interest of Board in Participation Loan.** Each Participation held by the Board will include an interest in all amounts of principal and interest on the Participation Loan to which it relates received by the Lender in payment thereof from whatsoever source said payments are derived and in all Collateral, said interest subject to the provisions of Section 5.04 hereof, to be based upon the Board's Participation Percentage in such Participation Loan. Each Participation in a Participation Loan held by the Board shall be on parity with any other Participations therein and with the undivided interest therein retained by the Lender.

**Section 3.07. Assignability.** The Lender shall not assign its interest in a Participation Loan or any rights with respect thereto or grant other participation interests therein without the prior written consent of the Board. Such consent shall not be unreasonably or arbitrarily withheld. Should the Board assign its Participation Interest, it will notify the Lender of such assignment and such notice shall include the name and address of assignee and instructions on payments to be made under this Agreement.

**Section 4.01. Warranties.** The Lender represents and warrants with respect to each Participation Loan described in any Participation Certificate executed by the Board and Lender, that:

(1) The Lender is the sole legal, equitable and beneficial owner of each of said Participation Loans and has the right to sell and transfer a Participation Interest therein to the Board and has not heretofore sold or transferred or otherwise disposed of any portion of its interest without Board concurrence in any of such Participation Loans or the Collateral therefore.

(2) The property subject to each Security Agreement securing a Loan is, to the best of Lender's knowledge, free and clear of all liens that are prior or superior to the lien of such Security Agreements, except: (1) the lien for future taxes and assessments not yet due and payable, and (2) liens agreed upon in the Board's commitment.

(3) No Loan Documents are in default and there does not exist an event which may result in default under the terms and covenants thereof. No portion of any real property subject to any Security Agreement securing a Participation Loan has been released from such Security Agreement after the date of the applicable mortgage's title insurance policy.

(4) All Loan Documents in connection with each Participation Loan are to the best of Lender's knowledge, valid and enforceable under existing law.

(5) Each Participation Loan complies with all applicable provisions of the Act and Loan Policy promulgated by the Board pursuant thereto.

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**Section 4.02. Further Warranties.** Lender further represents and warrants at all times relevant herein that:

(1) The Lender is and will be authorized to do business in the State of Montana and there are and will be no substantial or material violations on the part of the Lender of any applicable state or federal law, regulation or rule.

(2) Each person executing this Agreement and each Participation Certificate is or will be, at the time of execution and delivery thereof, fully authorized to do so on behalf of the Lender.

(3) As of the date any loan is offered to the Board for Participation, not more than seven percent (7%) in aggregate unpaid principal amount of all Participations theretofore purchased from the Lender by the Board have been delinquent for 90 days or more.

**Section 5.01. Custody of Notes and Loan Documents.** The Lender shall have custody and control of the Notes and the Loan Documents relating to each Participation Loan with full authority, subject to the provisions of this Agreement, to control in the name of the Lender the collection and enforcement thereof, and the utilization of the Collateral therefore, by suit, foreclosure, or otherwise. The Lender shall maintain customary records required by its supervisory authorities as to each loan in which the Board has acquired a participation interest. The Board or its duly authorized agents may inspect the records, controls, accounts, agings, audits, analysis and other files of the Lender relating to each Participation Loan and the relevant Loan Documents during ordinary business hours of the Lender.

**Section 5.02. Remittance of Collections for Participation Loans.** (1) The Lender shall receive all the loan repayments on Participation Loans in trust for the benefit of the Board without commingling and shall promptly remit to the Board its share of all amounts so received. Except as herein provided, the Board shall not have recourse against the Lender, either for the principal or interest on the Participation Loans, except to enforce the obligation of the Lender to remit to the Board its share of principal and interest when, as and if collected by the Lender.

(2) Each remittance to the Board, with the exception of Participation Loans serviced under the SBA 1086 Agreement, shall be accompanied by a Participation Report set forth on Exhibit B hereto.

(3) The Lender shall remit to the Board its proportionate share of all principal and interest payments received by the Lender within five (5) business days of its receipt thereof. The Board's share of interest to be remitted by the Lender shall be originally computed from the date of receipt by the Lender from the Board of the purchase price for its Participation Interest in each Participation Loan, and interest on the Participation Loan shall thereafter be computed by Lender as provided for in the note. Any payment received after the five (5) business days grace period will be subject to a late fee equal to the Board's interest rate, times the late payment amount, times the number of days after the grace period, divided by the method of calculation (365 days, 360 days or 366 days during leap year).

**Section 5.03. Sharing of Repayment Proceeds for Participation Loans.** The Lender shall not acquire any preferential security, surety or insurance to protect its participation interest in a Participation Loan. All repayments, security or guarantee of any nature, including without limitation rights of set-off and counterclaim which Lender or Board jointly or severally may at any time recover from any source whatsoever or have the right to recover on any Participation Loan, shall repay and secure the interest of the Lender and the Board in the same proportion as such interest bears respectively to the unpaid balance of the Participation Loan. The Lender shall notify the Board of any loan or advance by the Lender or of which the Lender has knowledge to

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the Borrower subsequent to a Participation Loan, and if, in the Board's opinion, circumstances require, and the Borrower's consent, if required, is first obtained, enter into a written agreement with the Board providing for the application of collateral or proceeds realized therefrom to the respective loans in a manner satisfactory to the parties hereto.

**Section 5.04. Management of Participation Loans.** (1) The Lender shall have the right to manage, perform and enforce the terms of each Note and the other Loan Documents pertaining to any Participation Loans and to exercise and enforce all privileges and rights exercisable or enforceable by it thereunder and to grant or withhold consents or approvals there under according to the Lender's discretion and in the exercise of its business judgment (subject to the provisions of clause (2) of this Section 5.04), provided that the Lender will not take any of the following described actions with respect to any Participation Loan without the prior written approval of the Board:

- (a) amend or modify any terms of the relevant Note or the other Loan Documents;
- (b) release any property subject to a Security Agreement (whether or not new collateral is substituted) which it is not obligated to release prior to payment in full of the indebtedness secured thereby or by terms of the Loan Documents; or
- (c) accelerate the maturity or grant any material extension of time for performance by the Borrower under the relevant Note or any other Loan Document.
- (d) make an additional voluntary advance to the Borrower under an open end mortgage or deed of trust, secured by the same Collateral.
- (e) sue or foreclose upon any Security Agreement, which prior approval shall include approval by the Board of the selection of legal counsel for such foreclosure;
- (f) waive any claim against the Borrower or any guarantor, standby creditor or other obligor of such Loan;
- (g) disburse any proceeds from fire or other insurance received as a result of fire or casualty damage or loss in excess of \$10,000 covering any Collateral or any award received as a result of any proceeding involving the condemnation of any Collateral, except as permitted by the applicable Security Agreement;
- (h) consent to the sale, transfer, pledge or assignment of any of the Collateral or the grant of any other security interest in the Collateral by a Borrower; or
- (i) subordinate the Lender's lien rights in any of the Collateral.

(2) With respect to each Participation Loan the Lender will:

- (a) exercise the same degree of care that it exercises in the servicing and administration of loans for its own account;
- (b) service the Participation Loan in accordance with generally accepted banking practices;
- (c) take all reasonable steps to collect promptly amounts due on each Participation Loan; and
- (d) provide the Board with accurate information regarding each Participation Loan.

(3) All funds received from any Borrower or from any other source, or retained as part of the Participation Loan proceeds for the purpose of paying taxes, insurance premium to maintain the insurance coverage required hereby or by the Loan Documents, special assessments, or for the purpose of guaranteeing the repair or completion of improvements to the property subject to any Security Agreement shall be retained and disbursed by the Lender at such time, and from time to time, as the Lender in its discretion shall deem necessary.

(4) Each party hereto acknowledges and agrees that it will, independently and without reliance upon the other party hereto or the directors, officers, agents or employees of such other

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party and instead in reliance upon information furnished by each Borrower and upon such other information as it deems appropriate, make its own independent credit analysis and decision to make, in the case of the Lender, and to participate, in the case of the Board, in each Participation Loan hereunder. Each party hereto agrees that it shall, independently and without reliance on the other party or the directors, officers, agents or employees of the other party continue to make its own independent credit analysis and decisions in taking or in refraining from taking any action under this Agreement. The Board, however, shall be entitled to rely on the accuracy of any and all information provided to it by the Lender regarding each Participation Loan. Each party hereto may employ agents and attorneys-in-fact and shall not be answerable, except as to money or securities received by it or its authorized agents, for the default or misconduct of any such agents or attorney-in-fact selected by it with reasonable care after appropriate investigation. Each party hereto shall be entitled to rely upon any document, paper or instrument reasonable believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and in respect to legal matters, upon the opinion of counsel selected by it.

(5) (a) In the event either party hereto (the "Indemnified Party") shall incur out-of-pocket expenses or liability (other than as a result of fraud, defalcation, negligence, willful misconduct, violation of the covenant of good faith and fair dealing, or unlawful act of the Indemnified Party or its officers and employees) in connection with any Participation Loan, this Agreement, or any Loan Documents, the other party hereto shall pay and indemnify the Indemnified Party upon demand for its ratable share (based upon its Participation Percentage in the Participation Loan with respect to which such expenses or liability was incurred) of such expenses or liability which is not reimbursed by a Borrower. The Lender's Participation Percentage for purposes of this clause (5) shall be the difference between the Board's Participation Percentage and 100%.

(b) In the event either party hereto (the Indemnified Party) shall incur out-of-pocket expenses or liability as a result of the fraud, defalcation, negligence, willful misconduct, violation of the covenant of good faith and fair dealing, unlawful act or failure to exercise the degree of care required herein of the other party, or its officers and employees in connection with any Participation Loan, this agreement or any Loan Documents, the other party hereto shall pay and indemnify the Indemnified Party upon demand the entire amount of such expense or liability which is not reimbursed by a Borrower. The Lender will notify the Board within five business days if a payment on the Participation Loan becomes 60 days past due.

**Section 6.01. Duty of Lender.** The Lender will also promptly notify the Board of the occurrence of any material default under any Participation Loan of which it has knowledge or has received notice. The Lender will not make any effort to exercise its remedies with respect to a default without first sending written notice to the Board specifying the remedies which the Lender proposes to take with respect to such default. If the Board does not give other written instructions to the Lender within 30 days after its receipt of such written proposals, the Lender may proceed with its proposed remedies. If the Board within such 30 day period disapproves the remedies proposed to be taken by the Lender and the Lender and Board cannot agree upon the remedy to be pursued, the decision of the holder of the larger Participation percentage in such Participation Loan shall determine the remedies to be taken.

**Section 6.02. Cost of Remedying Default.** In the event of a default on any Participation Loan, the Board shall share ratably on the basis of its Participation percentage in such Participation Loan in any expenditures necessary to maintain and preserve the position of the Lender with regard to such Participation Loan, including, without limitation, expenditures for taxes, insurance premiums, prevention of waste, repairs, maintenance and attorney's fees, to the

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extent not recoverable from Borrower. Prior notification, including the estimated costs, must be submitted for the Board's approval prior to incurring any expenses related to any event of default or default proceedings, subject to the limitations contained in section 6.01 herein. Reimbursement of such expenditures from the Board will not be due until final liquidation of such Participation Loan, except where such liquidation takes more than 6 months, in which case the Board will remit its pro rata share of costs to the Lender on a semiannual basis.

**Section 6.03. Foreclosure.** In case of foreclosure, Lender shall protect the interest of the Board upon a sale of the Collateral, and Lender shall be required to prosecute any claim for any deficiency judgment to the extent allowed by law for the benefit of the Board unless otherwise instructed by the Board. Lender shall manage and preserve the Collateral until and through final liquidation of the property. The Lender shall, after payment of all reasonable costs and expenses of foreclosure and collection, remit to the Board its pro rata share of all net proceeds received by the Lender as a consequence of such foreclosure proceeding, including, without limitation, the proceeds of the foreclosure sale and the income from the operation of the property pending liquidation. The Lender shall be permitted to enter a bid at a foreclosure sale for the amount due on the Participation Loan plus any fees, expenses or penalties charged by the Lender or the Board for default. Any bid in excess of such amount shall be made only with the consent of the Board. If Lender acquires the Collateral through foreclosure or deed in lieu of foreclosure, the Board shall have an interest in the property equivalent to its Participation Interest in the Participation Loan and title will be in the name of Lender and the Board.

**Section 7.01. Taxes.** The Lender shall use its best effort to ensure that all taxes and assessments on the mortgaged property are promptly paid. In the event any mortgagor fails to make payment required to be made under the terms of said mortgage, Lender warrants that it will notify the Board of such fact within thirty (30) days after the same shall have become due and payable.

**Section 7.02. Insurance Required.** Unless waived in writing by the Board, the Lender shall require that the property subject to any Security Agreement (excluding land) is, at all times relevant herein, insured as herein specified. Such insurance shall be evidenced by an insurance policy that is:

- (1) is issued by a reputable, nationally recognized insurance company authorized to do business in the state of Montana;
- (2) is in full force and effect;
- (3) contains a loss payable clause in favor of the Lender; and
- (4) is in an amount acceptable to the Board.

The Board may require additional coverage on specific Loans as it deems necessary which may include, but not be limited to, earthquake, flood, breach of warranty, liability and loss or rents coverage.

**Section 7.03. Insurance on Real Property.** If the property subject to a Security Agreement is or includes real property, insurance coverage on such property shall include loss or damage due to fire, vandalism and optional perils and shall be in an amount of not less than 90 percent of the replacement value of the improvements on the real property.

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**Section 7.04. Insurance on Personal Property.** If the Mortgaged Premises is or includes Tangible Personal Property, the insurance coverage on such property shall include fire, theft, comprehensive, collision and liability.

**Section 7.05. Errors and Omissions Insurance.** Lender is not required to maintain an errors and omissions insurance policy but is requested to submit a copy of said policy to the Board if one is maintained.

**Section 8.01. Independent Contract.** The Lender shall be in the status of and act as an independent contractor and shall in no event be considered an agent or employee of the Board. The Agreement shall not constitute nor be construed to create a partnership or joint venture between the Lender and the Board.

**Section 8.02. Servicing Fees.** As compensation for the administration of Participation Loans under this Agreement, the Lender may retain a servicing fee from the interest collected on each Participation Loan in an amount equal to the amount by which interest paid by the Borrower on such Participation Loan exceeds the interest rate payable to the Board as specified in the Commitment and the Participation Certificate applicable to such Participation Loan. The fees authorized to be charged for change in ownership, modification of loan or late charges may also be collected and retained by the Lender for its own account. Pre-payment penalties, if any, shall be shared pro rata by the parties.

**Section 9.01. Repurchase Upon Lender's Material Breach.** In the event of any material breach by the Lender of any agreement contained herein or the Loan Policy with respect to any Participation Loan not cured to the Board's satisfaction within 30 days, the Lender shall, at the Board's option, repurchase the Board's Participation in such Participation Loan for the principal balance and accrued interest on the Board's Participation therein and other monies advanced by the Board with respect to such Participation.

**Section 9.02. Remedies of the Board.** Upon the failure of the Lender to perform any obligation imposed upon it under this Agreement, the Act or Loan Policy promulgated pursuant thereto, or in any dissolution, termination of existence, insolvency, business failure, appoint of receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law, State or Federal, by or against the Lender, the Board shall have the right to notify the Borrowers and any other obligors of any Participation Loan of the Board's interest therein and demand and receive payment from it to the extent of the Board's Participation Percentage and the Lender, upon demand of the Board, shall assign to the Board, or its designee, the Loan Documents then held by it, reserving unto the Lender, however, its own participation therein.

**Section 10.1. Attorney's Fees.** In the event either party hereto shall institute any action or proceeding against the other party hereto relating to this Agreement, the unsuccessful party in such action or proceeding shall reimburse the successful party for its reasonable attorneys' fees as fixed by the Court.

**Section 10.2. Notices.** All notices which may be required herein shall be in writing and shall be considered to have been given as of the date and time when the same is deposited in a

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United States Post Office with postage prepaid and mailed by registered or certified United States Mail, return receipt requested, to the Lender at the following address:

and to the Board at the following address:

*Board of Investments  
2401 Colonial Drive, 3<sup>rd</sup> Floor (59601)  
P.O. Box 200126  
Helena, MT 59620-0126*

**Section 10.3. Provisions Binding.** The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

**Section 10.4. Waivers, etc.** No failure on the part of the Board to exercise and no delay in exercising, any power or right hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right. The remedies herein provided are cumulative and exclusive of any remedies provided by law.

**Section 10.5. Amendments.** The Board or the Lender may change the terms and conditions of this Agreement upon notice to the other party for future or new loans or as to existing Participation Loans with respect to the affected party's undivided interest if such changes are necessitated because of changes or amendments to the Internal Revenue Code of 1954, as amended, to regulations promulgated there under or rulings interpreting the same, to Montana law, or to federal law or regulations applicable to the Lender. Should the Board or the Lender desire any other amendment, the party requesting the amendment shall notify the other party thereof in writing. If the other party will not agree to the proposed amendment, the party requesting the amendment may terminate this Agreement, but this Agreement shall continue to be operative as to the Participation(s) already purchased. Notwithstanding the above provisions, the Board may, from time to time, as required by applicable law and regulation decrease the interest rate payable by the Borrower on the Board's Participation.

**Section 10.6. Rights and Authority Irrevocable.** All rights and authority given to the Board under this Agreement are irrevocable so long as Board owns any Participation in any Participation Loan.

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**IN WITNESS WHEREOF**, The Lender and the Board have caused this agreement to be duly executed on the date first above written.

**BOARD OF INVESTMENTS**

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

\_\_\_\_\_  
Lender

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

Attest:

\_\_\_\_\_  
(CORPORATE SEAL)

**Exhibit A**  
**LOAN PARTICIPATION CERTIFICATE**

Approved Lender Number: \_\_\_\_\_

BOI Loan Number: \_\_\_\_\_

Approved Lender's Routing/Transit No.: \_\_\_\_\_

This certificate is issued by the undersigned institution (Approved Lender) to the Montana Board of Investments (Board) for the loan to be participated in by the Board in accordance with its Commitment Letter dated (Commitment Letter). It represents the original stated interest in the following loan:

Borrower: \_\_\_\_\_ Outstanding Principal Balance: \$ \_\_\_\_\_

Maturity Date: \_\_\_\_\_

Date of Note: \_\_\_\_\_ Effective Interest Rate to Borrower: \_\_\_\_\_ %

Approved Lender's Share: Amount \$ \_\_\_\_\_ Interest Rate: \_\_\_\_\_ % Percentage of Total: \_\_\_\_\_ %

Board's Share: Amount \$ \_\_\_\_\_ Interest Rate: \_\_\_\_\_ % Percentage of Total: \_\_\_\_\_ %

Board's Net Yield: \_\_\_\_\_ % + Approved Lender's Service Fee: \_\_\_\_\_ %

With regard to this loan, the Approved Lender certifies as follows:

- 1) That all Loan Documents described in the Commitment Letter have been executed by the Borrower and Approved Lender and conform to the Commitment Letter;
- 2) That all Security Documents described in the Commitment Letter have been filed and recorded by the Borrower or the Approved Lender with the appropriate county and state officials; and
- 3) That the loan has been fully disbursed or, in the case of a Participation Loan, will be fully disbursed upon receipt of the Board's share.

The Approved Lender and Board, by acceptance hereof, agree to the following:

- 1) This certificate is effective as of its date and is issued subject to the provisions hereinafter contained.
- 2) The Approved Lender will diligently service the loan in accordance with the Servicing Agreement of the Board of Investments between the Approved Lender and the Board, and in the case of the purchase by the Board of a participation in a federally guaranteed loan, the Approved Lender will service the loan in accordance with the appropriate secondary market agreement required by the federal agency.
- 3) The Board's participation interest in the loan is transferable.

Dated: \_\_\_\_\_.

Approved Lender: **Approved Lender/city**

ATTEST:

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

ACCEPTED:

MONTANA BOARD OF INVESTMENTS

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

Administrative Officer

## Exhibit B

Please fill in all blanks to ensure proper reconciliation.

This form is available electronically by contacting April Madden, Accounting Staff, In-State Loan Programs, by phone at 444-0003 or by email: [amadden@mt.gov](mailto:amadden@mt.gov)

<b>BOARD OF INVESTMENTS PARTICIPATION REPORT</b> ON LOANS SERVICED BY APPROVED FINANCIAL INSTITUTIONS PURSUANT TO THE TERMS OF PARTICIPATION OR GUARANTY AGREEMENT UNDER WHICH THIS LOAN WAS MADE			
<b>FAX TO:</b> BOARD OF INVESTMENTS (406) 444-4268	<b>BOI PARTICIPATION UNDER ITS:</b> Business Loan Participation Program Federally Guaranteed Loan Program (excluding SBA)		
1. COMPLETE ON EACH REPORT:  Amount of Note:           \$ _____  Date of Note:                _____	<b>BOI LOAN NUMBER:</b>		
Maturity Date:            _____	<b>BORROWER (Name):</b>		
Interest is calculated on: ____30/360 ____ Actual days/365 ____ Other (explain below)	<b>Lender (Name and Address):</b>		
<b>Next payment date:</b> _____			
<b>Total required payment amount:</b> \$ _____			
<b>Repayment*</b>			
2. Repayment received _____, _____ on installment due _____, _____ in the amount of.....\$ _____			
3. Interest period: From _____, _____ to _____, _____. Number of days .....\$ _____			
4. BOI's share of interest ( <u>%</u> rate on <u>%</u> of gross principal balance).....\$ _____			
5. LENDER's share of interest:			
a) LENDER's rate ( <u>%</u> rate on <u>%</u> of gross principal balance).....\$ _____			
b) LENDER's <u>%</u> service fee on <u>%</u> of BOI's share of gross principal balance.....\$ _____			
TOTAL LENDER's share (a + b) .....\$ _____			
6. Total interest (Item 4+Item 5).....\$ _____			
7. Total principal (Item 2 - Item 6).....\$ _____			
8. BOI's share of principal:( <u>%</u> of Item 7).....\$ _____			
9. LENDER's share of principal:( <u>%</u> of Item 7).....\$ _____			
10. <b>PAYMENT DUE TO BOI**:</b> (Item 4+Item 8).....\$ _____			
<b>Balance of Loan Account</b>	<b>Gross</b>	<b>BOI's Share</b>	<b>LENDER's Share</b>
11. Principal balance from previous report.....			
12. Less principal repayment, if any, reported above.....			
13. Current outstanding loan balance .....			
<b>DEFAULTS (if any) AND COMMENTS:</b>			
Authorized Signature**:  			
Name/title (Please print or type)	Phone No.:	Fax No.:	Date of Report:
* In the event the borrower's remittance includes amounts for taxes, etc., only that portion of the remittance applicable to principal and interest should be reported. **Signature authorizes the Board of Investments to initiate ACH transfer for the "Payment to BOI" amount indicated.			

