MONTANA DEPARTMENT OF COMMERCE

LOAN PARTICIPATION AND SERVICING AGREEMENT

THIS AGREEMENT is made and entered into on **DATE** by and between **Bank Name** (the Lender) and the **Montana Department of Commerce** (Commerce).

WITNESSETH

WHEREAS, Commerce is an agency of the State of Montana; and

WHEREAS, Commerce administers various loan participation programs through which Commerce will participate with approved financial institutions to make financing available to Montana businesses; and

WHEREAS, The Lender is a bank/financial institution duly organized and existing under the laws of Montana; and with its principal office at lender address; and

WHEREAS, Commerce has offered the Lender an opportunity to participate in certain loan participating program(s) authorized under Montana law; and

WHEREAS, the Lender and Commerce agree that if Commerce decides to participate in a loan such participation shall be upon the terms and conditions set forth herein; and

WHEREAS, the Lender and Commerce are both authorized to enter into this Agreement for the purpose of defining each party's rights and obligations under the loan participation program(s);

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:

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Section 1. Definitions

The following words and terms have the following respective meanings:

1) "Borrower" means the person or entity to whom a Participation Loan is made by the Lender.
2) "Collateral" means the Real or Personal Property, which is or at any time becomes subject to a perfected security interest for the benefit of Commerce and Lender as applicable.
3) "Commitment Letter" means that written document, originated by Commerce specifying the terms and conditions under which Commerce will participate in a specific loan with the Lender.
4) "Lender" means a Commerce approved bank/financial institution issuing a loan in which Commerce will participate with loan participation program funds.
5) "Loan Agreement" means the agreement between the Borrower and the Lender setting forth the terms and conditions applicable to a Participation Loan.
6) "Loan Documents" mean the Security Agreement, the Loan Agreement, the Note, Guarantee(s), and other documents and instruments evidencing, securing, or otherwise pertaining to a Participation Loan, including as applicable, UCC financing statements.
7) "Loan Participation Certificate" means the certificate executed by the Lender and accepted in writing by Commerce setting forth the amount of a Participation Loan, the Lender's and Commerce's respective shares thereof in accordance with the Commitment Letter.
8) "Loan Participation Program" refers to the Loan Participation Program(s) administered at Commerce and as outlined in Exhibit B, which is attached hereto and specifically incorporated herein by this reference.
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 Commerce.
10) "Participation," "Participation Percentage," "Participation Interest" or words of like import mean Commerce's undivided interest in and ownership of a percentage of a

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Participation Loan as evidenced by the Loan Participation Certificate issued by the Lender with respect to such Participation Loan.

11) "Participation Loan" means a loan in which a Loan Participation Certificate has been issued by the Lender and Commerce has accepted the participation in writing.

12) "Participation Report" means an annual report summarizing the activities and status of each Participation Loan including the number of late payments, total loan payments remitted, and Commerce's Participation Interest repayments.

13) "Personal Property" means all equipment, machinery, inventory, receivables, tangible and intangible assets, and personal property that may be a part of a Project.

14) "Project" means the Real Property, equipment, fixtures, furnishings, working capital and personal property or any one or more of the foregoing financed by a Participation Loan.

15) "Program Guidance" means applicable Loan Participation Program administrative rules, guidance, administrative directives, or procedures that may be established or amended by Commerce.

16) "Real Property" means land and any buildings, structures, and equipment permanently attached or fixed to the land.

17) "Security Agreement" means an agreement granting a lien or security interest in Collateral for a Participation Loan including a mortgage, trust indenture, or other instrument incentivizing the performance of the Borrower's obligation to repay the Participation Loan.

Section 2. Rules of Interpretation

This Agreement will be governed and interpreted in accordance with Montana law. Any litigation concerning this Agreement must be brought only in the Montana First Judicial District, Lewis and Clark County. Each party must pay its own costs and attorney fees, except as otherwise stated in this Agreement (18-1-401, MCA).

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Section 3. Purpose

This Agreement shall govern the rights, interests, and obligations of the Lender and Commerce with respect to all Participation Loans entered into between the Lender and Commerce, except insofar as the terms hereof shall be modified, amplified, or amended by the terms of the Loan Participation Certificate or Commitment Letter issued with respect to a particular Participation Loan. The Agreement shall also govern the servicing obligations of the Lender with respect to Participation Loan(s).

Section 4. Processing of Participation Loan

The Lender is responsible for structuring the Participation Loan, including underwriting, payment terms, and borrower negotiations, in a manner that aligns with prudent lending practices and serves the interests of both parties. Commerce does not impose lending requirements or dictate the detailed structure of the loan; rather, it relies on the Lender's expertise to develop loan terms that are suitable to both parties. Commerce may engage in discussions with the Borrower during the application phase to assess eligibility, Loan Participation Program alignment, and potential structuring considerations. Commerce shall not be responsible for or unilaterally take part in 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. Any direct engagement by Commerce in loan negotiations beyond the application and commitment phase, shall only occur at the request of the Lender and in the Lender's presence. The Lender shall process and finalize the loan in accordance with the approved terms, ensuring compliance with Loan Participation Program requirements and mutually agreed-upon conditions. The Lender shall remain the primary point of contact for the Borrower regarding loan conditions and modifications post-origination.

Section 5. Submission of Information

The Lender shall provide Commerce with sufficient information to determine whether the loans offered for Participation conform to Commerce's policies, rules, and regulations.

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Section 6. Requirement of Participation Loan

(1) Any loan Commerce participates in shall be evidenced by a Note and a Loan Agreement executed by the Borrower and the Lender in a form approved by Commerce. To secure such Note, the Borrower shall execute and deliver to the Lender, and the Lender shall perfect interests under, appropriate Security Agreements, including but not limited to those specified hereafter in a form approved by Commerce:

(a) If the Project involves the Borrower having an interest as lessor or as lessee under one of more leases of Real or Personal Property, an assignment of the Borrower's interest in such leases;

(b) If the Project includes Personal Property, UCC financing statements or other actions are required to perfect a security interest in the Collateral; and

(c) Such other appropriate instruments as required by Commerce.

(2) All Participation Loans 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 Collateral, including chattel property, or ceases to utilize any of the property for the purpose of which such loan was made other than transfers in the ordinary course of Borrower's business including sale, transfer or disposal of obsolete, damaged or worn out equipment.

(3) Participation Loans shall not contain an unrestricted "future advance clause" that allows additional advances beyond the originally approved loan structure without Commerce's prior written approval. However, drawdown lines of credit are permitted if they adhere to the following conditions:

i. The total approved loan amount is fixed and defined in the original loan agreement;

ii. All draw requests must comply with pre-established conditions, including Lender review and approval;

iii. The Lender maintains sufficient documentation of each draw, and shall provide such documentation upon Commerce's request; and

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iv. No advances shall be made beyond the agreed loan limit without Commerce's explicit written approval.

(4) Participation Loans shall not contain a cross-collateral clause that secures the loan with collateral pledged for other loans outside of the Participation Loan agreement unless Commerce grants prior written approval. Commerce may approve cross-collateralization arrangements when such structure is deemed beneficial to the integrity of the Participation Loan and does not compromise Commerce's interests. Commerce may also allow the lien position to be subordinate to a senior lien held by the same Lender participating in the transaction or another loan held by Commerce, or in limited and justified cases, to a third-party loan if such subordination is disclosed, clearly warranted, and approved in advance by Commerce. Any proposed cross-collateralization or subordination must be detailed in the application or loan package and is subject to Commerce's review and sole discretion.

Section 7. Commitment to Participate

Upon approval by Commerce of an application submitted in accordance with the Loan Participation Program, Commerce shall issue a Commitment Letter to the Lender and the Borrower setting forth the terms and conditions under which it will participate in a loan.

Section 8. Payment and Delivery of Documents for Loan Participation

The Lender shall deliver to Commerce a complete set of the Loan Documents as required by the Commitment Letter. Upon receipt of a Loan Participation Certificate executed by the Lender, Commerce shall execute the Loan Participation Certificate so long as the Representations and Warranties provided in this Agreement as Exhibit A is included. The review of all Loan Documents or documents required under the Commitment Letter by Commerce does not constitute the concurrence by Commerce of the accuracy, validity, or legality of the documents presented as required by the Commitment Letter. Lender may withhold funding of a loan until it receives the executed Loan Participation Certificate from Commerce.

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The Lender is responsible for managing all aspects of the loan closing, including documentation, and funding. The Lender will also oversee the disbursement of proceeds to the Borrower in accordance with the approved loan terms and any agreed-upon draw schedule. Commerce will disburse its portion of the Participation Loan proceeds in reasonable proximity to the closing date once the Commitment Letter is executed and as indicated by the Lender. Commerce's role in disbursement is limited to providing its portion of funding to the Lender, who will ensure proper administration and compliance with the Commitment Letter, respective Loan Agreement, applicable Loan Participation Program Guidance and rules, and this Agreement.

Section 9. Interest Rate for Participation Loans

Participation Loan Program interest rates will be determined by the applicable Program Guidance.

Section 10. Commerce Interest in Participation Loan

Each Participation held by Commerce includes an interest in the amount of principal as evidenced by the Commitment Letter and Loan Participation Certificate, all payments made by the Borrower on the Participation Loan, all Collateral to the Participation Loan received by the Lender and said interest subject to the provisions of Section 16 hereof, based upon Commerce's Participation Percentage in such Participation Loan. Each Participation in a Participation Loan held by Commerce shall be on parity with any other Participations therein and with the undivided interest therein retained by the Lender.

Section 11. Assignability

(1) 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 Commerce. Such consent shall not be unreasonably or arbitrarily withheld provided that the

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assignment is consistent with and subject to all terms and conditions of this Agreement. Any assignment, transfer, or subcontracting of Lender's rights or duties under this Agreement does not relieve the Lender from compliance with its duties in this Agreement. For purposes of this Agreement, a merger or change in control of Lender shall not be an assignment subject to this paragraph.

(2) Should Commerce 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 12. Warranties

The Lender represents and warrants with respect to each Participation Loan described in any Loan Participation Certificate executed by Commerce and Lender that, as of the date of the Loan Documents:

(1) The Lender is the sole legal, equitable, and beneficial owner of each said Participation Loan(s) and has the right to sell and transfer a Participation Interest therein to Commerce and has not heretofore sold or transferred or otherwise disposed of any portion of its interest without Commerce concurrence in any of such Participation Loan(s) or the Collateral, therefore. If the Lender wishes to sell a portion of its retained portion of the Participation Loan, the Lender must get prior written approval from Commerce and retain up to ten percent (10.00%) of the original loan amount in accordance with the Loan Participation Program.

(2) The Collateral is, to the best of Lender's knowledge, free and clear of all liens that are prior or superior to the Lender's interests, except: (1) the lien for future taxes and assessments not yet due and payable and (2) subordinated liens agreed upon in Commerce's commitment.

(3) If the Collateral is subject to a superior or prior lien and the subject loan is in a secondary or subordinate security position, Commerce must give its approval to the secondary or subordinate security position.

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(4) No Loan Documents are in default and, to Lender's knowledge, there does not exist an event which may result in a default under the Loan Documents. 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 mortgagee's title insurance policy.

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

(6) Each Participation Loan complies with all applicable provisions of the Act and Program Guidance.

(7) The review and acceptance of all Loan Documents or documents required under the Loan Participation Program does not constitute the concurrence by Commerce of the accuracy, validity, or legality of the documents presented.

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

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

(10) The Lender certifies that it is in compliance with the requirements of 31 C.F.R. § 1020.220, regarding customer identification programs as applicable.

Section 13. Custody of and Access to Notes and Loan Documents

(1) 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 Commerce has acquired a Participation Interest.

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(2) The Lender agrees to make available, during ordinary business hours, to Commerce staff or any of their duly authorized representatives, all books and records related to the use of the Loan Participation Program funds including access to any records necessary to audit for agreement compliance, subject to applicable privacy laws. Commerce may terminate this Agreement, without incurring liability, for Lender's refusal to allow access as required by this section (18-1-118, MCA).

(3) Information included in a Borrower's Loan Participation Program application is subject to Montana's public records, privacy, and trade secrets laws and federal laws pertaining to financial institutions' and borrowers' records.

4) Lender shall retain all records related to this Agreement for a period of five (5) years following termination or expiration of this Agreement.

Section 14. Remittance of Collections for Participation Loans

(1) The Lender shall establish and maintain a dedicated checking account for the purpose of receiving and processing loan repayments related to Participation Loans and Loan Participation Programs administered by Commerce. The Lender shall provide Commerce with a Loan Participation Coupon for each payment received. The Loan Participation Coupon template shall be provided by Commerce and will include at a minimum: (i) Borrowers Name, (ii) Commerce Loan Number, (iii) Effective Date of Payment, (iv) Payment Amount, (v) Current Loan Balance, and (vi) New Loan Balance.

(2) Commerce shall draft all amounts owed to Commerce until its Participation Interest is paid in full on the 5th and 20th of each month. Should the day fall on a weekend, Commerce will draft the payment on the following business day. The total amount of the draft will be calculated based on the Lender's remittance of Loan Participation Payment Coupon to Commerce. To facilitate this process, the Lender shall execute an ACH authorization agreement with Commerce, authorizing Commerce to initiate ACH transfers from the designated checking account. The Lender shall receive and hold all loan repayments on

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Participation Loan(s) due to Commerce in trust for the benefit of Commerce without commingling.

(3) Except as herein provided, Commerce shall not have recourse against the Lender for the principal of Participation Loan(s), except to enforce the obligation of the Lender to remit to Commerce its share of principal when paid by the Borrower to the Lender.

(4) Each remittance to Commerce shall be accompanied by a receipt.

Section 15. Sharing of Repayment Proceeds for Participation Loans

The Lender shall not acquire any preferential security, surety, or insurance to protect its interest in a Participation Loan. All repayments, security, or guarantee of any nature, including without limitation rights of off-set and counterclaim which Lender or Commerce 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 Commerce pro rata in accordance with the Participation Interest. The Lender shall notify Commerce of any loan or advance made to Borrower subsequent to a Participation Loan, made by the Lender.

Section 16. Management of Participation Loans

(1) The Lender shall have the right to manage, perform, and enforce the terms the Loan Documents pertaining to a Participation Loan and to exercise and enforce all privileges and rights exercisable or enforceable by it thereunder; and to grant or withhold consents or approvals thereunder according to the Lender's discretion and in the exercise of its business judgement (subject to the provisions in clause (2) of this Section 16), 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 Commerce:

(a) amend or modify any terms of the Loan Documents;

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(b) release any Collateral (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, except for Collateral sold or transferred in the ordinary course of Borrower's business, including obsolete, damaged or worn-out equipment;

(c) accelerate the maturity or grant any material extension of time for performance by the Borrower under the relevant Loan Documents;

(d) make an additional voluntary advance to the Borrower under an open-end mortgage or deed of trust, secured by the same Collateral;

(e) waive any claim against the Borrower or any guarantor, standby creditor, or other obligor of such Participation Loan;

(f) release any Borrower or guarantor, standby creditor, or other obligor of such Participation 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 Borrower except for Collateral sold or transferred in the ordinary course of Borrower's business, including obsolete, damaged or worn-out equipment; and

(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(s) in accordance with generally accepted banking practices;

(c) take all reasonable steps to collect promptly amounts due on Participation Loan(s); and

(d) provide Commerce with accurate information regarding Participation Loan(s).

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(3) All funds received from a 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) Except as provided below, each party hereto acknowledges and agrees that it will, independently and without reliance upon the other party hereto or upon the directors, officers, agents or employees of such other party, make its own independent credit analysis and decision to enter into a Participation Loan as provided hereunder. Each party will make such determinations on the basis of information furnished by each Borrower and upon such other information as that party deems appropriate. Commerce shall be entitled to rely on the accuracy of any and all information provided by Lender to Commerce regarding each Participation Loan.

Section 17. Duty to Defend, Indemnify, and Hold Harmless

Lender shall defend, indemnify and hold harmless the State of Montana hereunder and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action, liabilities, damages, judgments, expenses or fees, including the reasonable cost of defense thereof and attorney fees, arising or awarded in favor of Lender's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting in whole or in part from (i) the services performed by Lender under this Agreement or (ii) other acts or omissions of Lender and/or its agents, employees, representatives, assigns, subcontractors, and arising out of or related to this Agreement, except the sole negligence of the State.

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Section 18. Duty of Lender

The Lender will promptly notify Commerce of the occurrence of any material default under any Participation Loan of which it has knowledge or has received notice. The Lender will provide Commerce written notice of Lender's intent to exercise remedies with respect to a default. If Commerce does not give contrary written instructions to the Lender within 15 business days after its receipt of such written proposals, the Lender may proceed with its proposed remedies unless such action requires Commerce written approval as outlined in Section 16.

Section 19. Cost of Remedying Default

In the event of a default on any Participation Loan, Commerce 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 extent not recoverable from Borrower up to Commerce's remaining Participation Interest in the Participation Loan. Prior notification, including the estimated costs, must be submitted for Commerce's approval prior to incurring any expenses related to any event of default or default proceedings, subject to the limitations contained in this Section 19. Reimbursement of such expenditures from Commerce will not be due until final liquidation of such Participation Loan, except where such liquidation takes more than 6 months, in which case Commerce will remit its pro rata share of costs to the Lender on a semiannual basis. Commerce's share in the expenditures outlined in this provision shall not exceed its remaining Participation Interest in the defaulted Participation Loan.

Section 20. Foreclosure

In case of foreclosure, Lender shall protect the interest of Commerce upon a sale of the Collateral, and Lender shall be required to prosecute any claim for any deficiency judgment

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to the extent allowed by law for the benefit of Commerce unless otherwise instructed by Commerce. 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 Commerce 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 Commerce for default. Any bid in excess of such amount shall be made only with the consent of Commerce. Commerce 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 Commerce.

Section 21. 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 Commerce of such fact within sixty (60) days after the same shall have become due and payable.

Section 22. Required Insurance

(1) Unless waived in writing by Commerce in its Commitment Letter, the Lender shall require that the Project 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 Commerce.

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(2) Commerce 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.

(3) Lender is required to maintain an errors and omissions and lender liability insurance policy and is required to submit a copy of said policy to Commerce if one is requested.

(4) If the Project is or includes Real Property, insurance coverage on such property shall include loss or damage due to fire, vandalism, course of construction, builder's risk, and optional perils as applicable to the Project.

(5) If the Project is or includes Personal Property, the insurance coverage on such property shall include fire, theft, comprehensive, collision and liability, as applicable.

Section 23. 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 Commerce. This Agreement shall not constitute nor be construed to create a partnership or joint venture between the Lender and Commerce.

Section 24. Lender Default

The occurrence of any one or more of the following events or conditions shall constitute an Event(s) of Default by the Lender under this Agreement, unless a written waiver of the default is signed by Commerce:

1. Any representation or warranty made by the Lender under this Agreement or any of the Loan Documents is incorrect in any material respect;

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2. Any material breach by the Lender of any duty or obligation under this Agreement that is not cured by the Lender to the satisfaction of the Commerce within forty-five (45) calendar days after written notice thereof by Commerce to the Lender;
3. 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;
4. Any voluntary bankruptcy or insolvency proceedings commenced by the Lender, or any involuntary bankruptcy or insolvency proceedings commenced against the Lender that are not set aside within sixty (60) calendar days from the date of institution thereof; or
5. The Lender has been issued at least four (4) written notices of noncompliance by Commerce within a rolling twelve (12) month period, related to the same or separate Participation Loan, and has failed to remedy such noncompliance to the satisfaction of Commerce within the applicable cure periods. Commerce will work with the Lender to rectify the non-compliance before issuing a written notice.

Section 25. Remedies

Upon the occurrence of any one or more Events of Default by the Lender under this Agreement, and after the Lender has failed to cure multiple instances of noncompliance across multiple participated loans, Commerce shall be entitled to pursue and enforce all rights and remedies available, legal and equitable, including but not limited to:

1. Recoupment and Offset –Commerce may exercise the right of recoupment against any amounts owed to the Lender under this Agreement or any other agreement with Commerce.
2. Audit Rights – Commerce shall have the right to require the Lender's books and records related to the Participation Loan, Loan Documents, and this Agreement to be separately audited by Commerce or its agents at no cost to Commerce.
3. Repayment Demand – If the Lender remains in noncompliance after multiple written notices and cure periods, and Commerce determines that such noncompliance

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materially affects the integrity of the program, Commerce may demand full repayment of Commerce's participated portion of any affected Loan(s) within a commercially reasonable timeframe, as determined at Commerce's sole discretion.

4. If the Lender materially breaches any terms or conditions of this Agreement, the Loan Documents, or the Program Guidance with respect to any Participation Loan and the breach is not cured to Commerce's reasonable satisfaction within 30 days, the Lender shall, at Commerce's option, and unless limited by law or regulation, repurchase Commerce's Participation in such Participation Loan(s) for the then principal balance on Commerce's Participation.

Nothing in this Agreement shall be construed to require Commerce to exercise any particular remedy or to limit Commerce's ability to take alternative corrective action, including suspension of future participation programs administered by Commerce.

Section 26. Notices

All notices which may be required under the provisions of this Agreement must be in writing and delivered to the parties' liaisons identified herein either by first class mail, electronic mail, or personal service.

All notices which may be required herein shall be in writing and shall be given as of the date and time when the same is deposited in a 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:

Bank Name
Address
Address Line 2

and to Commerce at the following address:

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Olivia Kettenring
Business Development Manager or successor
Montana Department of Commerce
301 S Park Ave
P.O. Box 200505
Helena, MT 59620-0505

Section 27. 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 28. Waivers, etc.

Commerce's failure to complain of any act or omission on the part of Lender, no matter how long the same may continue, may not be deemed to be a waiver by Commerce of any of its rights hereunder. No waiver by Commerce of satisfaction of condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by Commerce's authorized representative.

Section 29. Amendments

Commerce 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 to regulations promulgated there under or rulings interpreting the same, to Montana law, or the federal regulations applicable to the Lender. Should Commerce 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

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this Agreement, but this Agreement shall survive as to the Participation(s) already purchased.

Section 30. Rights and Authority Irrevocable

All rights and authority given to Commerce under this Agreement are irrevocable so long as Commerce owns any Participation in any Participation Loan of a Loan Participation Program.

Section 31. Reporting

The Lender agrees to provide Commerce with any information Commerce or a representative of the State of Montana deems necessary to ensure compliance with the Loan Participation Program and state law.

Section 32. Termination

Commerce may, with a 30-day prior written notice, terminate this agreement if federal or state government funds are not appropriated or become unavailable or reduced for any reason. Commerce shall be liable to Lender for the payment, or prorated portion of that payment, owed to Lender up to the date Commerce's termination takes effect. This is Lender's sole remedy. Commerce shall not be liable to Lender for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

< SECTION 33 MAY BE EXCLUDED AT LENDERS DISCRETION >

Section 33. Applicability to Future Automation Loans

In the event that the Montana Automation Loan Program is identified in Exhibit B at the time of execution, this Agreement shall control over and govern all future Participation Loans approved under the Montana Automation Loan Program after this Agreement's execution date.

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This provision shall not affect the validity or administration of any Participation Loans previously executed under a prior Lender Loan Servicing Agreement under the Montana Automation Program. Such existing Participation Loans shall remain in full force and effect under the terms of the Lender Loan Servicing Agreement in place at the time the Participation Loan was executed.

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

LENDER

_____

Lender Name, Title Date

Bank Name

COMMERCE

_____

Mandy Rambo, Deputy Director Date

Montana Department of Commerce

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Exhibit A

REPRESENTATIONS AND WARRANTIES BY LENDER. Lender makes the following representations and warranties to Commerce:

Credit Analysis. Lender represents and warrants that: (a) Lender has conducted, to the extent it deemed necessary, a review of the Loan Documents and all other documents related thereto in the possession of Commerce and requested by Lender; (b) Lender has conducted, to the extent it deemed necessary, an independent investigation of Borrower, including, without limitation, an investigation relating to the creditworthiness of Borrower, and the risk involved to Lender in the advance of its funds pursuant to the Agreement; and (c) Lender has based its decision to purchase a Participation Interest in the loan on an evaluation of the loan, the Loan Documents, the Borrower's creditworthiness and the existence, value, and lien status of the Collateral securing the loan.

Investment Representations. Lender represents and warrants that: (a) Lender does not consider the acquisition of its Participation Interest hereunder to constitute the "purchase" or "sale" of a "security" within the meaning of the Securities Act of 1933, the Securities Exchange Act of 1934 or Rule 10b5 promulgated thereunder, the Trust Indenture Act of 1939, any applicable state securities statute or law, or any rule or regulation under any of the foregoing; (b) Lender has no expectation that it will derive profits from the efforts of the Lender or any third party in respect of the acquisition of Lender's participation hereunder; (c) such participation merely constitutes a transaction by Lender with Commerce regarding Lender's Participation Interest in the obligations of Borrower under the Loan Documents and does not represent an "investment" (as that term is commonly understood) in Commerce or Borrower; (d) Lender is purchasing its Participation Interest hereunder for its own account in respect of a transaction made in the ordinary course of its operations and not with a view to or in connection with any subdivision, resale, or distribution thereof; and (e) Lender is engaged in the business of entering into transactions (including transactions of the nature contemplated herein and in the Loan Documents), can bear the economic risk related to the purchase of the same, and has had access to all information deemed necessary by it in making its decision whether or not to purchase the same.

EXAMPLE

Exhibit B

<Participating Programs selected by Lender>

Lender hereby agrees to participate as a Participating Lender, as governed by the Loan Participation and Servicing Agreement, in the following programs administered by the Montana Department of Commerce:

1. Opportunities in Rural Economies Loan Participation Program
2. Wood Products Revolving Loan Fund Program
3. Montana Automation Program

Lender agrees to comply with all applicable local, state, and federal laws as well as all applicable regulations, ordinances, and resolutions now in effect or as may be amended during the term of this Agreement. In particular, the Lender will comply with all Program Guidance, administrative directives, and procedures that may be established or amended by Commerce for the above-named Loan Participation Programs.

EXAMPLE