

**ARKANSAS DEVELOPMENT FINANCE AUTHORITY  
ARKANSAS CREDIT RESERVE PROGRAM**

**LENDER PARTICIPATION AGREEMENT**

This AGREEMENT made effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Arkansas Development Finance Authority ("ADFA" or "Program Manager"), a public body, politic and corporate, organized and existing under the laws of the State of Arkansas, whose address is 900 W Capitol, Suite 310, Little Rock, Arkansas 72201 and \_\_\_\_\_("Lender"), whose address is \_\_\_\_\_.

**RECITALS**

WHEREAS, ADFA was created by Act 1062 of 1985 of the General Assembly of the State of Arkansas, as amended, (the "Act") with the power to provide loan insurance for endeavors relating to industrial, commercial, or agricultural enterprises; and

WHEREAS, ADFA has determined that in order to promote economic development and help create jobs for the people of the State of Arkansas, there is a crucial need to assist in providing access to financing for Arkansas businesses that otherwise might not be able to obtain such access; and

WHEREAS, ADFA has determined that establishing a credit reserve program (the "Program") will promote and serve the intended purposes of and in all respects will conform to the provisions and requirements of the Act; and

WHEREAS, ADFA's Board of Directors has approved certain funds for the purpose of funding the Program; and

WHEREAS, ADFA and the Lender desire to set forth the terms and conditions of the Program that will apply if the Lender decides to register loans in the Program;

NOW, THEREFORE, the parties hereto agree as follows:

**DEFINITIONS**

In addition to the words and terms defined elsewhere in the Agreement, each of the following words and terms as used in the 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:

"Act" means the Arkansas Development Finance Authority Act 1062 of 1985, as amended.

"Affiliate of the Borrower" means any person or entity directly or indirectly controlled by the Borrower or directly or indirectly controlling the Borrower. For purposes of this definition, a person controls another person if such person, directly or indirectly, or acting through or in concert with one or more persons: (A) owns, controls, or has the power to vote fifty percent (50%) or more of any class of voting securities or interest of the other person; (B) controls in any manner the election or appointment of a majority of the directors or management of the other person; or (C) has the power to exercise a controlling influence over the management or policies of the other person.

"Affiliate of Lender" means any person or entity directly or indirectly controlled by the Lender or directly or indirectly controlling the Lender or under common control with the Lender. For purposes of this definition, a person controls another person if such person directly or indirectly, or acting through or in concert with one or more persons; (A) owns, controls, or has the power to vote fifty percent (50%) or more of any class of voting securities or interests of the other person; (B) controls in any manner the election or appointment of a majority of the directors or management of the person; or (C) has the power to exercise a controlling influence over the management or policies of the other person.

"Arkansas Business Enterprise" means an individual or entity carrying on a trade or business primarily within the State of Arkansas.

"Arkansas Credit Reserve Account" ("ACR") means the money market account opened with Lender in the name of the Program Manager pursuant to Establishment of ACR Account below.

"Bank Lender" means the type of institution defined as such in the definition of Eligible Lender below.

"Borrower" means the recipient of a Loan which is, has been or will be registered by the Lender in the Program.

"Business Day" means any day other than a Saturday, Sunday, or any other day on which commercial banks in Arkansas are required or authorized to be closed.

"Claim" means any claim filed by the Lender pursuant to Claims by Lender Against ACR Account below.

"Eligible Borrower" means an Arkansas Business Enterprise which will utilize the Loan so as to cause the primary economic benefit of the Loan, including the creation of jobs, to be located in the state of Arkansas as determined by the Program Manager. An Eligible Borrower may be a profit-making or not-for-profit enterprise.

"Eligible Lender" means a depository institution which has been designated as an eligible public depository located in the state of Arkansas and regulated by the Office of the Comptroller of the Currency, the Federal Reserve Board, the Arkansas State Bank Department or similar regulatory agency (a "Bank Lender").

"Eligible Loan" means a Loan that meets the criteria for an Eligible Loan set forth in the Program Guidelines and for which each of the representations and warranties set forth in Representations and Warranties of the Lender Made at Each Loan Registration.

"Gross Loan Amount" means the total amount of principal that is to be advanced pursuant to the Loan documents. With respect to a Loan made pursuant to a line of credit agreement, the Gross Loan Amount shall equal the maximum stated amount of principal that may be advanced under the terms of such agreement.

"Lender Insider" means an executive officer, director, or principal shareholder of the Lender, or a member of the immediate family of an executive officer, director or principal shareholder of the Lender, or a related interest of such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms "executive officer", "director", "principal shareholder", "immediate family" and "related interest" shall have the respective meaning ascribed thereto in Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O and the Office of Thrift Supervision Regulations at 12 C.F.R. §563.43.

"Loan" means any advance of money to a Borrower by a Lender that is evidenced by a promissory note or other instrument that obligates the Borrower to repay the advance.

"Loan Registration Fee" means the payment required to be made by the Borrower for deposit by the Lender into the ACR Account upon registration of a Loan pursuant to Registration of Loans in the Program; Loan Registration Fees; Matching Funds; Refinance of Registered Loan; Termination of Registration.

"Matching Funds" means the deposit to be made into the ACR Account by the Program Manager with respect to each Registered Loan in the amount set forth in the Program Guidelines in effect at the time the Loan is registered.

"Net Proceeds of a Loan" means the Gross Loan Amount less costs incurred in issuing the Loan which are paid by the Borrower out of the Gross Loan Amount.

"Non-Bank Lender" means the type of institution defined as such in the definition of Eligible Lender above.

"Program" means the Arkansas Credit Reserve Program established by ADFA pursuant to Resolutions of the Board of Directors of ADFA.

"Program Guidelines" means the Arkansas Credit Reserve Guidelines established by ADFA and provided to Lender by the Program Manager, as amended from time to time.

"Program Manager" means ADFA.

"Registered Loan" means a Loan registered under the Program pursuant to Registration of Loans in the Program.

### **REPRESENTATIONS AND WARRANTIES OF ADFA**

At the execution and delivery of this Agreement, ADFA represents and warrants:

Valid Existence: ADFA is a body corporate and a political subdivision established and

acting pursuant to the Act.

Due Authorization, Enforceability, No Violation. ADFA has the necessary power under the Act and has duly taken all action on its part required to authorize, execute and deliver this Agreement. This Agreement when executed shall be valid, binding and enforceable against ADFA in accordance with its terms. The execution and performance of this Agreement by ADFA will not violate or conflict with any instrument by which ADFA is bound.

### **REPRESENTATIONS AND WARRANTIES OF THE LENDER**

At the execution and delivery of this Agreement and as of the time of the registration of any Loan, the Lender represents and warrants:

Due Organization and Qualification: The Lender is an Eligible Lender duly organized and authorized to make loans in the State of Arkansas.

Due Authorization, Enforceability, No Violation: The Lender has all necessary power and has duly taken all action on its part to authorize, execute and deliver this Agreement. This Agreement when executed shall be valid, binding and enforceable against the Lender in accordance with its terms. The execution and performance of this Agreement by the Lender will not violate or conflict with any instrument, agreement, order or decree by which the Lender is bound.

Current Tax Status: The Lender has filed all tax returns (federal, state and local) required to be filed and paid taxes shown thereon to be due, including interest and penalties, or, to the extent the Lender has not paid such taxes, the Lender is contesting in good faith an assertion of liability based on such returns.

Discrimination and Affirmative Action: During the performance of this Agreement, the Lender agrees as follows:

The Lender will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. The Lender will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mention characteristics. Such action shall include, but not be limited to the following: employment, upgrading, demotions, or transfer, recruitment or recruitment advertising; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lender agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provision of this non--discrimination clause.

The Lender, will, in all solicitations or advertisements for employees placed by or on behalf of the contractor; state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.

Minority Access to the Program: The Lender agrees to use its best efforts to provide

Minority Business Enterprises with the maximum practicable opportunity to participate in the Program.

**REPRESENTATIONS AND WARRANTIES OF THE LENDER MADE AT EACH LOAN REGISTRATION**

Representations Obtained from Borrower: The Lender has obtained from the Borrower the following representation and warranties and, to its actual knowledge, the Lender has no reason to believe based on information available to it that any such representation or warranty is not true:

If applicable, the Borrower is duly organized (for profit or not-for-profit), validly existing and in good standing under the laws of the state under which the Borrower is organized and if the Borrower is not organized under the laws of the State of Arkansas, the Borrower is qualified to do business in the State of Arkansas.

The Borrower is not in material violation of any federal or state law, judgment, decree, order, statute, rule or governmental regulation.

The Borrower is an Eligible Borrower.

All of the Net Proceeds of the Loan will be applied to support an Arkansas Business Enterprise.

The Borrower has not been promised or told by anyone that it has any legal, beneficial, entitlement or equitable interest in any payment or other funds credited to the ACR Account.

**LENDER REPRESENTATIONS AND WARRANTIES**

The aggregate Gross Loan Amount of all Registered Loans to Borrower or any Affiliates of Borrower shall not exceed \$500,000.00. In making this representation, the Lender may rely upon certifications as to the identities of Affiliates of the Borrower provided to the Lender by Borrower.

The Lender has complied in all material respects with all federal and state laws, statutes, rules and regulations pertaining to the making of the Loan.

The Lender shall service each Registered Loan and shall proceed to recover against the Borrower, any and all collateral securing a Registered Loan in the event of a default by the Borrower in accordance with its standard policies and procedures, and in accordance with the standard of loan servicing employed by the Lender for its commercial loan portfolio generally.

Immediately upon making the Loan, to the Lender's actual knowledge, neither the Borrower nor any Affiliate of the Borrower will be in material violation of any term of any mortgage, loan agreement or indenture with the Lender.

The Lender has determined that the Loan is an Eligible Loan and the Lender has

completed all documents required to be filed with the Program Manager to register the Loan in accordance with the terms of the Agreement.

The Loan is not being made to benefit a Lender insider.

### **ESTABLISHMENT OF ACR ACCOUNT**

Establishment of ACR Account- Initial Deposit of Funds: Upon execution of this Agreement, if Lender is a Bank Lender, the Lender shall open a money market account at the Lender in the name of the Program Manager to be used as the ACR Account hereunder or, if Lender is a Non-Bank Lender, the Program

The Lender shall deliver to the Program Manager a completed Loan Registration Form in the form attached hereto as Appendix 1, executed by an authorized officer of the Lender, together with a Borrower Notice and Waiver in the form attached hereto as Appendix 2. For the purposes of this Agreement, the filing of a Loan for registration shall be deemed to occur on the date on which the Lender delivers the documentation required by this subparagraph to the Program Manager, which may be faxed to its Loan and Development Specialist, Cami Davis at (501) 682-5939.

If Lender is a Bank Lender it shall deposit in the ACR Account the required Loan Registration Fee with respect to the Loan in accordance with Loan Registration Fee below, and shall deliver to the Program Manager evidence that such deposit has occurred in accordance with procedures specified by the Program Manager. If Lender is a Non-Bank Lender it shall wire the required Loan Registration Fee directly into the Lender's designated ACR Account opened by Program Manager or shall remit such fee directly to the Program Manager for deposit into the ACR Account. Evidence of the deposit into the ACR Account will be provided by Program Manager to a Non-Bank Lender upon acceptance of the loan registration as provided in Loan Registration Fee below.

Acceptance of Registration by Program Manager: Upon the Program Manager's determination that the Lender has satisfied the requirements specified in Loan Registration Fee below, the Program Manager shall register the Loan, deposit the applicable Matching Funds in the ACR Account in accordance with Deposit of Matching Funds by Program Manager below and, if Lender is a Non-Bank Lender, provide Lender with evidence of such deposit in Lender's ACR Account held in Program Manager's name.

Loan Registration Fee: The Borrower of each Eligible Loan registered under the Program shall pay a Loan Registration Fee equal to the percentage of the Gross Loan Amount of the Registered Loan as set forth in the Program Guidelines in effect at the time the Loan is registered. Each Loan Registration Fee shall be deposited by Lender into the ACR Account. The Lender may include the Loan Registration Fee in the Gross Loan Amount if the Borrower and Lender so agree.

Deposit of Matching Funds by Program Manager: Matching Funds shall be deposited into the ACR Account by the Program Manager with respect to each Registered Loan in the amount set forth in the Program Guidelines in effect at the time the Loan is registered.

Extension, Renewal and Refinance of Registered Loans: A Registered Loan may be

extended, renewed and refinanced provided that any increase in the Gross Loan Amount of the Registered Loan shall not cause the aggregate Gross Loan Amounts of all registered Loans to the Borrower and any Affiliate of the Borrower to exceed \$500,000. At the time the Registered Loan is extended, renewed or refinanced, the Borrower shall pay an additional Loan Registration Fee equal to the percentage of any increase in the Gross Loan Amount of the Registered Loan as set forth in the Program Guidelines in effect at the time the Loan is registered. Each additional Loan Registration Fee shall be deposited by Lender into the ACR Account.

The Lender shall notify the Program Manager that the Registered Loan has been extended, renewed or refinanced and, if there is no increase in the Gross Loan Amount, provide written information detailing the change accompanied by a copy of the original Loan Registration Form for the loan. If the Gross Loan Amount has been increased as allowed, the Lender shall submit a new Loan Registration Form, together with a copy of the original Loan Registration Form and evidence of the deposit of the additional Loan Registration Fee into the ACR Account.

Termination of Registration: If a Registered Loan that is a line of credit has an outstanding balance of zero for a 12-month period, such line of credit shall no longer be considered a Registered Loan unless before the expiration of the 12-month period the Lender has affirmed in writing to the Borrower that the line of credit will remain open, the Borrower has acknowledged in writing such reaffirmation and such reaffirmation is delivered to the Program Manager. If the outstanding balance of a Registered Loan that is not a line of credit is reduced to zero, such Loan shall no longer be considered a Registered Loan. If at the end of the term of a Registered Loan there remains an outstanding balance owed to the Lender solely because the Borrower is in default, then such a Loan shall remain a Registered Loan until the default of the Borrower is cured or such balance is reduced to zero.

#### **ANNUAL LOAN STATUS REPORTS: WITHDRAWAL OF EXCESS FUNDS FROM ACR ACCOUNT**

Annual Loan Status Report: On or before January 30 of each year, the Lender shall file a report with the Program Manager in the form attached hereto as Appendix 3, indicating the outstanding balance and current status of each Registered Loan as of the previous December 31.

Right to Withdraw Excess Funds: If upon receipt of the annual status reports regarding the Lender's Registered Loans the Program Manager determines that the balance in the ACR Account exceeds the aggregate Gross Loan Amounts of all of the Lender's Registered Loans at that time, the Program Manager may withdraw such amount from the ACR Account. If the Program is terminated by Program Manager or Lender ceases registering loans in the Program, the Program Manager may withdraw the balance remaining in the ACR Account when the Lender has no Registered Loans outstanding.

Failure to File Reports: If the Lender failed to file a status report concerning any Registered Loan within thirty days of its original due date, the Program Manager shall be entitled to withdraw from the ACR Account, based on the Program Manager's determination from an audit of the Lender's files an amount not greater than the amount by which the ACR Account balance exceeds the aggregate outstanding Gross Loan of all

registered Loans as of the date for which such report was required to be filed.

### **CLAIMS BY LENDER AGAINST ACR ACCOUNT**

If a Registered Loan becomes delinquent or otherwise in default, the Lender may file a Claim with the Program Manager for reimbursement of losses out of the ACT Account in accordance with the provisions of this section.

Requirement to Charge-Off Loan: The Lender may file a Claim with respect to a Registered Loan only upon a charge off of all or a portion of the Registered Loan in accordance with the Lender's ordinary policies and procedures for charging off commercial Loans or as required by federal or state regulatory agencies. The Lender shall cease to accrue interest on a Registered Loan in accordance with generally accepted accounting principles and as required by federal or state regulatory agencies.

Delivery of Claim Form to Program Manager: Upon making the charge off required by this section, the Lender may file a claim with the Program Manager by submitting a completed Claim Form in the form attached hereto as Appendix 4, signed by an authorized officer of the Lender which shall be accompanied by satisfactory evidence that Lender has charged off such amount on its books. Any Claim that is filed hereunder shall be delivered to the Program Manager not later than thirty (30) calendar days after the date the charge off occurs.

Loan History Information: At the time a Claim is submitted, the Lender shall provide a certified history of disbursements, payments, accruals of interest and any other charges with respect to the Registered Loan for which the Claim is filed. The Lender shall provide the Program Manager with such further information concerning the Registered Loan as may be reasonable requested by the Program Manager. The Lender shall retain documentation in its files evidencing all expenses for which a Claim is filed.

Amount of Claim: The allowable amount of the Claim shall equal the amount of the principal and accrued interest charged off by Lender on the Registered Loan together with Lender's reasonable out-of-pocket expenses provided, however, that the amount of the Claim shall not exceed the Gross Loan Amount as stated in the Loan documents at the time of registration. The amount of the Claim shall not include any amount attributable to damages paid by the Lender as a result of a legal claim against Lender for negligence, misconduct or unpaid late charges or additional default interest imposed by the Lender.

### **PAYMENT OF CLAIMS FROM ACR ACCOUNT**

Review of Claims Prior to Payment: The Program Manager shall review Claims submitted by the Lender prior to payment of such Claims in accordance with this section. Prior to the expiration of the ten (10) business day period, specified in this section, for payment of a Claim, the Program Manager may issue a written notice of proposed rejection or adjustment of the Claim to the Lender that shall state the basis for the proposed rejection or adjustment. A claim may be rejected or adjusted on the basis that any representation or warranty provided by the Lender with respect to a Registered Loan

was known by the Lender, or should have been known by the Lender but for its negligence, to be false at the time the Loan was filed for registration or Lender's failure to substantially comply with the requirements of this Agreement. Upon receiving a notice of rejection or adjustment, the Lender may object to such notice by delivering a written statement to the Program Manager explaining the basis for such objection within ten (10) days after receipt of the Program Manager's notice. After review of Lender's objection, the Program Manager shall determine in its sole discretion whether to reject or adjust such Claim.

Payment of Claim: Within ten (10) business days after receipt by the Program Manager of a completed Claim Form and loan history from the Lender in accordance with the preceding section, the Program Manager shall pay, to the extent funds are available in the ACR Account, the amount of such Claim unless the Program Manager disputes the claim in accordance with the paragraph above.

Recovery of Paid Claims by Program Manager: The Program Manager shall have the right to seek recovery from the Lender of any Claim paid to the Lender if the Program Manager determines that any representation or warranty provided by the Lender with respect to a Registered Loan was known by the Lender, or should have been known by the Lender but for its negligence, to be false at the time the Loan was filed for registration or that a Claim was paid by the Program Manager in error. Upon its preliminary determination to dispute and recover a paid Claim in accordance with this subparagraph, the Program Manager shall issue a written notice of such intent to the Lender that shall state the basis for the intent to dispute and recover a Claim. The Lender may object to such action by delivering a written statement to the Program Manager explaining the basis for such objection within ten (10) days after the receipt of the notice. After receiving such objection, the Program Manager shall determine whether to seek recovery of the paid Claim in its sole discretion.

Insufficient Funds: If there are insufficient funds in the ACR Account to cover the entire amount of the Lender's Claim, the Program Manager shall pay to the Lender an amount equal to the current balance in the ACR Account to satisfy the Claim on a partial basis. Such payment shall be deemed to satisfy the Claim in full and the Lender shall have no other or further right to receive any amount from the ACR Account with respect to that Claim. If the Lender submits two or more Claims contemporaneously and there are insufficient funds in the ACR Account to cover the entire amount of such Claims, the Lender may designate the order of priority in which the Program Manager shall pay such Claims.

Arbitration: In the event of a dispute between the parties hereto with respect to the payment or recovery of any Claim, either party may elect to submit such dispute to binding arbitration pursuant to the rules of the American Arbitration Association. Both parties agree to be bound by any decision issued pursuant to such arbitration. Judgment upon any award rendered by the arbitrator may be entered by any court of competent jurisdiction in the State of Arkansas.

### **REPORTS OF COLLECTION STATUS**

Within sixty (60) days after a Claim is paid, the Lender shall provide the Program Manager with a written statement outlining the Lender's proposed plan for pursuing its collections rights under the documents evidencing and securing the Registered Loan. This

statement shall include the identity, location and estimated value of all collateral that secures payment thereof and the proposed methods of collection it will pursue against the collateral and any guarantors. Thereafter, the Lender shall periodically, but at least quarterly, provide a report to the Program Manager summarizing the status of and any changes to the proposed collection plan or collateral. At such time as the Lender determines that such collection activities are no longer economically feasible, it will so advise the Program Manager in writing at which time no further reports will be necessary.

### **RECOVERY BY LENDER SUBSEQUENT TO CLAIM**

If subsequent to payment of all or part of a Claim by the Program Manager, the Lender shall recover any amount with respect to which payment of the Claim was made, the Lender shall promptly notify the Program Manager and deposit in the ACR Account such amount recovered, less any reasonable out-of-pocket expenses incurred. The Lender shall retain documentation in its files evidencing any such expenses which may be reviewed by the Program Manager upon request.

### **SUBROGATION RIGHTS OF PROGRAM MANAGER**

In General: If the payment made on a Claim pursuant to Payment of Claims from ACR Account above has fully covered the Lender's loss on a Registered Loan, or if the payment made on a Claim pursuant to Payment of Claims from ACR Account above, when combined with any other recovery obtained by the Lender with respect to such Loan, has fully covered the Lender's loss, the Program Manager, upon its request, shall be subrogated to the rights of the Lender with respect to any collateral, security or other right of recovery, in connection with the Loan, which has not been realized upon by the Lender. Upon such request, the Lender shall assign to the Program Manager all of its right, title and interest in and to the Loan documents and any remaining collateral, security or other right of recovery in connection with the Loan. The Lender shall provide the Program Manager with all reasonable assistance thereafter as the Program Manager may request in proceeding with respect to any such collateral, security or other right of recovery, except that such reasonable assistance shall not require the Lender to incur any out-of-pocket expenses. Any funds received by the Program Manager as a result of enforcement actions taken with respect to any such collateral, security or other right of recovery shall be promptly deposited by the Program Manager in the ACR Account, less any reasonable out-of-pocket expenses incurred by the Program Manager in taking such enforcement actions and the amount of any payments made by the Program Manager pursuant to the next paragraph.

Payment to Secure Subrogation Rights: If the Program Manager determines that it desires to exercise its right of subrogation in connection with a Registered Loan and would be entitled to exercise such right except for the fact that the Lender's loss has not been fully covered, the Program Manager, at its option, may pay, from Program Manager funds other than those available in the ACR Account, an amount sufficient to result in the Lender's loss being fully covered. Upon making such payment pursuant to this subparagraph, the Program Manager shall be subrogated to the rights of the Lender in accordance with the paragraph above.

## **SUSPENSION; TERMINATION OF PROGRAM**

The Program Manager may temporarily suspend its obligation to register Loans in the Program under this Agreement for any reason, including lack of funding, by giving Lender seven (7) days prior written notice. Such suspension shall be effective on the date specified in such notice and shall remain effective until the Program Manager reinstates its obligation to register loans by written notice to Lender.

The Program Manager may terminate its obligation to register Loans in the Program under this Agreement by seven (7) days prior written notice to Lender. Such termination shall be effective on the date specified in the notice of termination. Any termination under this subparagraph shall be prospective only and shall not apply to any Loans previously registered under the Program. Subsequent to a termination of the Program Manager's obligation to register Loans under the Program pursuant to this subparagraph, when the balance of the ACR Account is reduced to zero, either through payments of Claims with respect to remaining Registered Loans or through withdrawals of funds by the Program Manager pursuant to Annual Loan Status Reports; Withdrawal of Excess Funds from ACR Account above, and all obligations and opportunities to collect on registered Loans have expired or lapsed, this Agreement shall automatically terminate.

## **AMENDMENTS TO THE AGREEMENT**

The Program Manager may, by giving at least fourteen (14) days prior written notice to the Lender, amend any provision of this Agreement. However, in the absence of the consent of the Lender, no such amendment shall be applicable to Loans made prior to the effective date of the amendment and no such amendment shall diminish Lender's rights as of the effective date of the amendment with respect to funds in the ACR Account.

## **AUDIT**

Upon notice to the Lender, the Program Manager may audit or retain an independent Certified Public Accountant at the Program Manager's expense to audit the records and files of the Lender relating to its Registered Loans and the ACR Account during normal business hours of the Lender.

## **LENDER'S WAIVER OF SET-OFF RIGHTS**

Notwithstanding any express or implied right of set-off provided to the lender by any depository agreement or any other agreement, the Lender hereby waives any and all rights of set-off against any funds held in the ACR Account arising in connection with any claim against the Program Manager whether arising under this Agreement or otherwise.

## **LENDER'S WAIVER AND INDEMNIFICATION**

The Lender hereby waives any and all claims, including claims of contribution or indemnity, against the Program Manager arising from the making, servicing and collections

of any Loan made by the Lender and the Program Manager's ownership of control of the funds deposited in the ACR Account. The Lender shall defend, indemnify and hold harmless the Program Manager, its officers, directors and employees, from and against any and all losses suffered by the Program Manager, its officers, directors and employees, and any and all claims, liabilities or penalties asserted against the Program Manager, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Lender.

**TERM OF AGREEMENT**

This Agreement shall be in full force and effect until terminated pursuant to Suspension; Termination of Program above.

**MISCELLANEOUS**

Information: The Lender shall provide the Program Manager with such information regarding its participation in the Program as the Program Manager may reasonably require.

Compliance with Applicable Law: The Lender shall comply with all applicable federal and Arkansas laws, statutes, rules and regulations in the making, servicing and collection of any loan.

Limitation of Rights: This Agreement shall be for the exclusive benefit of the Lender and the Program Manager and shall not be construed to give any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement.

Severability: If any clause or provision of this Agreement is held illegal or invalid by any court, the invalidity of such clause or provision shall not affect any of the remaining clauses or provisions hereof, and this Agreement shall not be construed and enforced as if such illegal or invalid clause or provision had not been contained herein.

Notices: All notices, certificates, requests or other communications hereunder shall be sufficiently 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 the Program Manager:

Arkansas Development Finance Authority  
Attn: Arkansas Credit Reserve Program  
900 West Capitol, Suite 310  
Little Rock, AR 72201

If to the Lender:

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

Binding Effect: This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

Assignment: The lender may not assign or transfer any interest in this Agreement without the prior written consent of the Program Manager.

No Personal Liability: No member, officer or employee of the Program Manager, including any person executing this Agreement, shall be liable personally under this Agreement or subject to any personal liability for any reason relating to the executing of this Agreement or the Program.

Diligence: The lender agrees to exercise reasonable prudence, care and diligence in the making, servicing and collection of Loan under the Program.

Captions: The captions in this Agreement are for convenience only and in no way define, limit or prescribe the scope or intent of any provisions or paragraphs of this Agreement.

Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arkansas.

In Witness Whereof, this Agreement entered into effective as the date first written above.

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

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

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

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

LENDER

\_\_\_\_\_

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

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

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