

## EXHIBIT D

### OPERATING COMPANY ASSURANCES

With respect to any Loan that the Lender files for enrollment under this SSBCI-CAP Agreement, each and every time the Lender seeks to enroll any Loan under SSBCI-CAP that is made for the Borrower's Passive Real Estate Investment purposes, the Lender shall secure the representations and warranties of the applicable operating company set forth below by returning to the MSF a fully finalized and executed form of this Exhibit:

### OPERATING COMPANY ASSURANCES

In connection with that certain loan from \_\_\_\_\_ (“Lender”) to \_\_\_\_\_ (“Borrower”), dated \_\_\_\_\_ (“Loan”), and in furtherance of pursuing enrollment of such Loan in the State Small Business Credit Initiative (“SSBCI”), Capital Access Program (“SSBCI-CAP”) operated by the Michigan Strategic Fund (the “MSF”), for the benefit of the MSF, the Borrower and the Lender, \_\_\_\_\_ (“Operating Company”) represents and warrants to the MSF and the Lender:

1. **Business Purpose.** The Loan proceeds will be used for a “business purpose.” A business purpose includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for impermissible Passive Real Estate Investment purposes. The definition of business purpose also excludes activities related to the purchase of securities; and lobbying activities as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

2. **Prohibited Use of Loan.** The Loan:

(a) will not be used in order to place under the protection of the approved SSBCI-CAP prior debt that is not covered under the approved SSBCI-CAP and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender;

(b) is not a Refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender;

(c) is a new extension of credit to the Borrower, and shall not be used to support existing extensions of credit – including but not limited to prior loans, lines of credit or other borrowing – that were previously made available as part of a state small business credit enhancement program;

(d) is not to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a state or local Government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or Local Government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. §1352;

(e) is not to pay any costs incurred in connection with (i) any defense against any claim or appeal of the United States Government, any agency or instrumentality thereof (including the US Department of Treasury), against the State of Michigan, or (ii) any prosecution of any claim or appeal against the United States Government, any agency or instrumentality thereof (including the US Department of Treasury), which the State of Michigan instituted or in which the State of Michigan has joined as a claimant;

(f) does not exceed the principal amount of \$5 million; and

(g) will not be used to pay the salary of any individual engaged in activities related to the SSBCI who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal government computer or while performing official Federal Government duties.

(h) is not to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or Local Government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or Local Government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. §1352;

(i) is not to repay delinquent Federal or State income taxes unless the borrower has a payment plan in place with the relevant taxing authority;

(j) is not to repay taxes held in trust or escrow, e.g. payroll or sales taxes;

(k) is not to reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or

(l) Is not to purchase any portion of the ownership interest of any owner of the business.

3. **Affiliations.** The Operating Company is not:

(a) an executive officer, director, or principal shareholder of the Lender;

(b) a member of the immediate family of an executive officer, director, or principal shareholder of the Lender; or

(c) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family.

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

4. **Business.** The Operating Company is not:

(a) a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business;

(b) a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a Community Development Financial Institution;

(c) a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;

(d) a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or

(e) a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

**5. Other Representations and Warranties:**

(a) The Operating Company does not have more than 500 employees (as defined in 13 C.F.R. Part 121.106).

(b) The Operating Company is a co-borrower or a guarantor of the Loan, as applicable;

(c) The Operating Company has executed all required certifications;

(d) Each natural person holding an ownership interest constituting at least twenty percent (20%) of the Borrower and the Operating Company has provided a personal guaranty in favor of the Lender for the Loan; and

(e) Borrower and Operating Company have a written lease with a term at least equal to the term of the Loan, including options to renew exercisable solely by Operating Company.

**6. No Conviction of Sex Offense.** No principal of the Operating Company has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, "principal" is defined as "if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.

**OPERATING COMPANY:**

\_\_\_\_\_  
(Printed Name of Operating Company)

By: \_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Printed Name Authorized Representative)

\_\_\_\_\_  
( Title of Authorized Representative)

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