**CASE - XXXXXX**

**STATE SMALL BUSINESS CREDIT INITIATIVE**

**SMALL BUSINESS CAPITAL ACCESS PROGRAM**

**AGREEMENT**

**BETWEEN THE**

**MICHIGAN STRATEGIC FUND**

**AND**

**LENDER**

This **Small Business Capital Access Program Agreement** (this “Agreement” or “CAP Agreement”), dated MONTH XX, 20XX (“Effective Date”), is between the Michigan Strategic Fund (the “MSF”), whose address is 300 North Washington Square, Lansing, Michigan 48913 and LENDER (the “Lender”), whose address is XXX. The MSF and the Lender are, individually, a “Party” and, collectively, the “Parties”.

**RECITALS**

1. In the State Small Business Credit Initiative Act of 2010 (title III of the Small Business Jobs Act of 2010, Public Law 111-240, 124 Stat. 2568, 2582 (the “SSBCI”), the US Congress appropriated funds to the US Department of Treasury to be allocated and disbursed to states that have created programs to increase the amount of capital made available by private lenders to small businesses (the “SSBCI Program(s)”).
2. At its May 25, 2011 meeting, the MSF approved the operation of the SSBCI Capital Access Program (the “SSBCI CAP” or “Program”), an SSBCI Program created by the MSF to disburse SSBCI funds in accordance with the SSBCI.
3. On June 21, 2011, the US Department of Treasury approved the State of Michigan, through the MSF, to receive and disburse SSBCI funds within the SSBCI Programs created by the MSF.
4. Under the direction and control of the MSF, the Michigan Economic Development Corporation (the “MEDC”), a public body corporate, provides administrative services for the MSF for the SSBCI CAP.
5. The MSF and the Lender now desire to sign this CAP Agreement to utilize SSBCI funds under the SSBCI CAP toward enhancing financing availability for small businesses in Michigan for the purposes of economic development.

**ARTICLE I**

**DEFINED TERMS**

Except as defined elsewhere in this Agreement, all capitalized terms in this Agreement shall have the respective meanings set forth below, and such definitions shall be equally applicable to both the singular and plural forms of the terms as the content may require:

1. “**Affiliate**”, when describing a relationship with the Lender, shall refer to the same relationship as the relationship between an affiliate and an institution as described in MCL 487.11201(c) or for credit unions, MCL 490.102(a).

1. “**Agreement”** or “**CAP Agreement**” has the meaning set forth in the preamble.
2. “**Borrower**” means the recipient of a Loan from Lender which is, has been, or will be filed by the Lender for enrollment under the Program.
3. “**Borrower Assurances**” are those assurances of the Borrower in the form set forth on Exhibit C.
4. “**Claim**” means a claim filed by the Lender pursuant to Section 5.3.
5. “**Effective Date**” has the meaning set forth in the preamble.
6. “**Eligible Loan**” means a Loan made by the Lender to a Borrower for which (i) the Lender’s Assurances as to such Loan are true and (ii) if then required by the MSF Background Check Review Policy, or MSF policy of similar intent, the results of any MSF required background check reviews in accordance with such policy (which review could include the Borrower, the Lender, or other persons or entities related thereto or to the Loan, including without limitation, their respective Affiliates) are satisfactory to the MSF in its sole discretion.
7. “**Enrolled Loan**” means a loan enrolled by the MSF pursuant to the terms of Article IV.
8. “**Event of Default**” has the meaning set forth in Section 7.1.
9. “**Lender**” has the meaning set forth in the preamble.
10. “**Lender Assurances**” are those assurances of the Lender in the form set forth on Exhibit A.
11. “**Loan**” means an extension of credit provided by the Lender to the Borrower.
12. **“Loan Manager**” means the person designated from time to time by the MSF or the MEDC to manage this Agreement.
13. “**MEDC**” has the meaning set forth in Recital D.
14. “**MSF**” has the meaning set forth in the preamble.
15. “**MSF Fund Manager**” means that person designated by the Board of Directors of the MSF from time to time to serve as the manager for the MSF programs. Provided further, any reference to the MSF Fund Manager in this Agreement shall be deemed to include reference to the MSF Fund Manager or MSF President or other MSF representative, with only one required to act.
16. “**Operating Company Assurances**” are those assurances of an operating company in the form set forth on Exhibit D.
17. “**Party**” or “**Parties**” has the meaning set forth in the preamble.
18. “**Passive Real Estate Investment**” means the use of Enrolled Loan proceeds by the Borrower to invest in real property or personal property acquired and held primarily for sale, lease or investment.
19. “**Program**” means the SSBCI CAP as further described in Recital B.
20. “**Reserve Fund**” has the meaning set forth in Section 3.1
21. “**Small Business**” means a Borrower with nor more than 500 employees (as defined in 13.C.F.R. Part 121.106 (as may be amended from time to time).
22. “**SSCBI Programs**” has the meaning set forth in Recital A.
23. “**SSCBI CAP**” has the meaning set forth in Recital B.
24. “**State**” means the State of Michigan.

**ARTICLE II**

**REPRESENTATIONS**

**Section 2.1 Representations by the MSF.** As of the Effective Date, and the date each Eligible Loan is enrolled in the Program as an Enrolled Loan, and the date the MSF pays any Claim hereunder, the MSF represents and warrants to the Lender:

1. (a) the MSF is a public body corporate and politic within a principal department of the State. The MSF has the power and authority to enter into and perform its obligations under this Agreement; and

(b) The MSF has taken all action on its part required to authorize, execute and deliver and perform its obligations under this Agreement. This Agreement, when executed will be valid, binding and enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other laws or principles of equity affecting the enforcement of creditors’ rights generally or by general principles of equity.

**Section 2.2** **Representations by the Lender.** As of the Effective Date, the date each Eligible Loan is enrolled in the Program as an Enrolled Loan (including any subsequent permitted enrollment as a result of refinancing), and the date the Lender files any Claim hereunder, the Lender represents and warrants to the MSF:

1. (a) The Lender is authorized to conduct business in the State and has the power and authority to enter into and perform its obligations under this Agreement; and

(b) The Lender has taken all action on its part required to authorize, execute and deliver and perform its obligations under this Agreement. This Agreement, when executed will be valid, binding and enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other laws or principles of equity affecting the enforcement of creditors’ rights generally or by general principles of equity.

**ARTICLE III**

**ESTABLISHMENT OF RESERVE FUND**

**Section 3.1 Reserve Fund.** As soon as institutionally possible for the MSF after full execution of this Agreement, the MSF shall establish a deposit account at the Lender in the name of the MSF for the purpose of receiving all required premium charges to be paid by the Lender and the Borrower, and transfers made by the MSF, pursuant to Article V (the “Reserve Fund”).

**ARTICLE IV**

**ENROLLMENT OF AN ELIGIBLE LOAN**

**Section 4.1 Enrolling a Loan.** In order to enroll a Loan under the Program, the Lender shall request that the Loan Manager enroll the Loan under the Program within thirty (30) calendar days after the date of the Loan from Lender to Borrower, by delivering by delivering to the Loan Manager, the following:

1. A fully finalized and executed copy of the Loan Enrollment Form in the form of Exhibit A.
2. A fully finalized and executed copy of the Lender Assurances in the form of Exhibit B.
3. A fully finalized and executed copy of the Borrower Assurances in the form of Exhibit C.
4. To the extent the Loan is for Passive Real Estate Investment of the Borrower, the Loan shall be made only to the extent the Borrower is a real estate holding company using the proceeds of the Loan for Passive Real Estate Investment to acquire and hold real or personal property and subsequently leasing the real of personal property to an operating company related to Borrower, and, in such case the Lender shall provide a fully finalized and executed copy of the Operating Company Assurances in the form of Exhibit D.
5. Evidence of the payment of the non-refundable premium charges payable by Lender and Borrower as set forth in Section 5.1(a) into the Reserve Fund in connection with the Loan.

**Section 4.2** **MSF Acknowledgement.** Within thirty (30) business days of receipt by the Loan Manager of the fully completed items identified in Section 4.1, the Loan Manager shall (i) enroll the Loan, unless the Loan is not an Eligible Loan, or the Lender is otherwise not in compliance with this Agreement as determined by the Loan Manager in its sole discretion, and (ii) provide written notice to the Lender (x) acknowledging enrollment of the Loan and of the amount being paid by the MSF into the Reserve Fund pursuant to Section 5.1(b), or (y) notification of the reasons that the Loan is not an Eligible Loan or the Lender is otherwise not in compliance with this Agreement, such notice including that if the deficiencies are curable in the Loan Manager’s sole discretion, the Lender shall have ten (10) business days thereafter to cure the deficiencies and to resubmit the request to enroll the Loan under the Program.

**Section 4.3 Amount Covered.** When requesting to enroll a Loan under the Program, the Lender may specify a Loan amount to be covered under the Program that is less than the total amount of the Loan.

**Section 4.4 Refinancing Enrolled Loans.**

1. **Maintaining Covered Amount**. In the event that an Enrolled Loan is later refinanced and the total amount to be covered under the Program does not exceed the covered amount of the Enrolled Loan as previously enrolled, the Loan, as refinanced, may continue as an Enrolled Loan and there shall be no additional premium charges payable, or MSF transfer. into the Reserve Fund.
2. **Enrolling Increased Amounts.** In the event that an Enrolled Loan is refinanced in an amount which, at the time of refinancing, exceeds the principal amount of that Enrolled Loan as previously enrolled, and if the Lender desires to increase the amount of the Enrolled Loan under the Program, the Lender shall resubmit the request for enrollment of the entire Loan in accordance with Section 4.1; provided however all additional payments into the Reserve Fund shall be based on the increased amount of the Loan.

**Section 4.5 Disenrollment of an Enrolled Loan under the Program.** An Enrolled Loan under the Program shall be deemed disenrolled under the Program upon the occurrence of any one or more of the following:

1. **Non-Revolving Loans**. In the event the outstanding balance of a non-revolving Enrolled Loan is reduced to zero; or
2. **Revolving Loans**. In the event the outstanding balance of a revolving Enrolled Loan is reduced to zero, and the outstanding balance of zero is maintained for a period of twelve (12) consecutive months; or
3. **Not an Eligible Loan**. In the event any Loan becomes an Enrolled Loan and later is determined not to be an Eligible Loan by the Loan Manager for any reason, the Enrolled Loan shall automatically be deemed not to be an Eligible Loan and further, automatically deemed disenrolled from the Program.

**ARTICLE V**

**USE OF THE RESERVE FUND**

**Section 5.1** **Payments into Reserve Fund.**

1. **Payments by Lender and Borrower**. The Lender shall set the premium charges payable to the Reserve Fund by the Lender and the Borrower in connection with a Loan being requested by the Lender for enrollment under the Program; provided however, the amount paid by the Borrower and Lender into the Reserve Fund shall not be less than 1.5% nor greater than 3.5% of the amount of the Loan, and the amount paid into the Reserve Fund by the Lender and Borrower shall be equal. Provided further, the Lender may recover from the Borrower the cost of the Lender’s payment into the Reserve Fund, in any manner in which the Lender and Borrower agree.

1. **Payments by MSF**. Commensurate with enrollment of a Loan as an Enrolled Loan in the Program, the MSF shall pay into the Reserve Fund, an amount equal to the combined amounts paid into the Reserve Fund by the Borrower and the Lender for each Enrolled Loan; provided however, the maximum amount to be paid into the Reserve Fund by the MSF over any three (3) year period in connection with any one Borrower, or any group of Borrowers among which a common enterprise exists, shall not exceed One Hundred Fifty Thousand Dollars ($150,000) unless otherwise approved by the Loan Manager, in its sole discretion. For the purpose of this paragraph the term “common enterprise” shall have the same meaning given to it in Part 32 of Title 12 of the Code of Federal Regulations, including amendments of those regulations.

**Section 5.2 Ownership, Control and Investments of Reserve Fund.** The Reserve Fund, and all funds deposited into the Reserve Fund, shall be the exclusive property of, and solely controlled by, the MSF. The MSF may not withdraw funds from the Reserve Fund except as permitted under this Agreement. Provided however, subject to the foregoing and all other terms and conditions of this Agreement, the MSF pledges that the Lender shall have a first security interest in the funds in the Reserve Fund to pay Claims as required hereunder, and the MSF will not encumber or pledge the funds to any other party.

**Section 5.3 Claims by Lender.** Subject to all the terms and conditions of this Agreement, if the Lender charges off all or part of an Enrolled Loan, and the Lender is otherwise in compliance with the Agreement, the Lender may file a claim with the MSF by submitting a fully completed claim form to the Loan Manager in the form attached as Exhibit E (“Claim”), or in such other form from time to time approved by the Loan Manager, in its sole discretion. Any Claim that is filed under this Agreement shall be filed contemporaneously with the action of the Lender to charge off all or part of the Enrolled Loan. The Lender shall determine when and how much to charge off on an Enrolled Loan in the manner that is consistent with its normal method for making such determinations on its commercial Loans which are not Enrolled Loans.

Notwithstanding anything to the contrary, Lender’s Claim may not exceed a charge off amount in excess of the principal amount of the Loan originally enrolled in the Program as an Enrolled Loan, plus up to ninety (90) calendar days accrued and unpaid interest. No costs, fees, or other expenses of any kind may be made part of the Claim.

If the Lender files two (2) or more Claims contemporaneously, and if there are insufficient funds in the Reserve Fund at that time to cover the entire amounts of those Claims, the Lender may designate to the Loan Manager, in writing, the order of priority in which the MSF shall pay the Claims.

**Section 5.4 Payment of Claims from Reserve Funds to Lender.** Subject to the terms and conditions of this Agreement, as soon as institutionally possible for the MSF after receipt by the MSF of a Claim filed by the Lender in accordance with Section 5.3, the MSF shall pay the permitted amounts due the Lender under Claim from the Reserve Fund. In the event there are insufficient funds in the Reserve Fund to cover the entire permitted amount of the Claim, after withdrawal by the MSF of any amounts from the Reserve Fund as permitted by this Agreement, the MSF shall pay to the Lender an amount equal to the balance of the Reserve Fund, and such payment by the MSF shall be deemed to have fully paid the Claim.

**Section 5.5 Recovery by Lender Subsequent to Claim.** If after payment of a Claim to the Lender by the MSF, the Lender recovers from a Borrower any amount for which payment of the Claim was made, the Lender shall promptly pay into the Reserve Fund the amount recovered (a) less Lender’s reasonable and customary out-of-pocket expenses and (b) less the amount of recovery in excess of the principal amount of the original amount of Loan as an Enrolled, plus so much of up to ninety (90) calendar days accrued and unpaid interest made part of the Claim. The Lender shall provide in writing, an itemized accounting to the Loan Manager of all such recovery, and deductions, and evidence of its ultimate payment into the Reserve Fund commensurate with its payment into the Reserve Fund.

**Section 5.6 Subrogation.** If the payment of a Claim pursuant to Section 5.4 has fully covered the Lender’s loss on an Enrolled Loan, or if the payment of a Claim pursuant to Section 5.4 when combined with any recovery from the Borrower, has fully covered the Lender’s loss on an Enrolled Loan, the MSF, upon the written request of the Loan Manager, 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. The Lender thereafter shall assign to the MSF any right, title or interest to any collateral, security, or other right of recovery in connection with the Loan. Provided however, such assignment shall include that the MSF does not assume nor is the MSF responsible for, any obligations of the Lender pursuant to its Loan documents, except for any obligations directly related to the exercise by the MSF of its assigned rights of recovery in connection with the Loan. The Lender shall fulfill any other obligations it may have under the Loan documents in the same manner and to the same degree as required had the assignment not been made. The Lender shall provide the MSF with all reasonable assistance thereafter as the MSF 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 MSF as a result of MSF enforcement actions taken with respect to any such collateral shall remain the sole and separate property of the MSF.

**ARTICLE VI**

**WITHDRAWALS FROM RESERVE FUND**

**Section 6.1** Only the MSF may make withdrawals from the Reserve Fund. The MSF may make withdrawals from the Reserve Fund upon the occurrence of any one or more of the following, and in each case, such funds shall remain the sole and separate property of the MSF:

1. **Interest or Income**. Interest or income earned on the funds credited to the Reserve Fund shall be deemed to be part of the Reserve Fund. The MSF may withdraw at any time from the Reserve Fund fifty (50%) percent of all interest or income that has been credited to the Reserve Fund, except that after the first such withdrawal the MSF may not withdraw more than fifty (50%) percent of all interest or income that has been credited to the Reserve Fund since the time of the last such withdrawal.
2. **Principal**. Upon request of the Loan Manager, the Lender shall file a report with the Loan Manager indicating the number and aggregate outstanding balance of all Enrolled Loans as of the previous December 31. In computing the aggregate outstanding balance of all Enrolled Loans, the balance of any Enrolled Loan shall in no event be considered to be greater than the covered amount of the Enrolled Loan. If reports filed pursuant to this Section indicate that for the immediately preceding twenty-four (24) consecutive month period the balance in the Reserve Fund exceeded the aggregate outstanding balance of all Enrolled Loans, the MSF may withdraw from the Reserve Fund, an amount not to exceed the amount by which the Reserve Fund balance exceeded the aggregate outstanding balance of all Enrolled Loans as of the previous December 31.
3. **Disenrolled Loans**. The MSF may immediately withdraw from the Reserve Fund, funds deposited by the MSF that are attributable to any Enrolled Loan later determined by the Loan Manager, in its sole discretion, not to be an Eligible Loan.
4. **Termination**. The MSF may immediately withdraw all funds from the Reserve Fund in the event this Agreement is terminated by the MSF as permitted under Article VII, (after expiration of any applicable cure period, without a cure by Lender).

**ARTICLE VII**

**SUSPENSION AND TERMINATION**

**Section 7.1 Event of Default; Suspension of Enrollment of Loans/Payment of Claims/Termination of Agreement.** Notwithstanding anything to the contrary, the MSF’s obligation to enroll any Loans or pay any Claims under this Agreement shall automatically be suspended and each may be terminated, and this Agreement may be terminated by the MSF Fund Manager, at its sole discretion, upon the occurrence, and during the continuance, of any one or more of the following events (each, an “Event of Default”), unless a written waiver is provided by the MSF Fund Manager, in its sole discretion:

1. any representation or covenant made by the Lender in support of this Agreement shall prove incorrect at the time that such representation was made in any material respect, including, but not limited to, any information provided in support of any request to enroll and Loan, file a Claim, or with respect to any report of the Lender hereunder,
2. any material failure by the Lender to comply with any of the terms, covenants and conditions on its part to be performed under this Agreement, including without limitation, failure to submit reports as required hereunder, which, if considered curable by the MSF is not cured by the Lender to the satisfaction of the MSF Fund Manager within the thirty (30) calendar days;
3. the Lender is in default, violation, breach, or non-compliance, of any kind or nature under any agreement or requirement, including submission of reports, with the MSF, or for any department or agency within the State, federal, local or any governmental agency, or the MEDC, which, if considered curable by the MSF is not cured by the Lender to the satisfaction of the MSF Fund Manager within the thirty (30) calendar days; or
4. any voluntary bankruptcy or insolvency proceedings are commenced by, or against, the Lender, with any such proceedings against the Lender not being set aside within sixty (60) calendar days from the date commenced.

**Section 7.2 Other Suspension of Enrollment of Loans/.** Notwithstanding anything to the contrary, the MSF’s obligation to enroll any Loans shall automatically be suspended and may be terminated, upon the occurrence, and during the continuance, of any one or more of the following events:

1. **Discretionary Cessation of Enrolling Loans**. The MSF Fund Manager may, in its sole discretion, suspend or terminate any MSF obligation under this Agreement to enroll Loans under the Program (including increasing coverage of any Enrolled Loan as a result of a permitted refinance) by providing written notice thereof to the Lender. The suspension or termination shall be applicable on the effective date specified in the notice of termination, except as to any Loan made by the Lender on such effective date; or
2. **Cessation of Enrolling Loans by State Action**. Notwithstanding anything to the contrary, in the event that the State Legislature or the State Government fails to provide or terminates the funding necessary for the MSF to continue to enroll Loans under the Program, the MSF Fund Manager may, in its sole discretion, terminate its obligations to enroll loans under the Program (including increasing coverage of any Enrolled Loan as a result of a permitted refinance) by providing notice to the Lender not less than thirty (30) calendar days before the date of cancellation. Provided further however, that in the event the action of the State Legislature or State government results in an immediate absence or termination of funding necessary to enroll new Loans under the Program, the MSF Fund Manager may, in its sole discretion, terminate any MSF obligation under this Agreement to enroll any Loans effective immediately upon delivery of written notice to the Lender.

**Section 7.3** **Lack of Enrollment of a Loan/Termination of Agreement**. Notwithstanding anything to the contrary, this Agreement may be terminated by the MSF Fund Manager, at its sole discretion, in the event a Loan has not been enrolled as an Enrolled Loan within a ten (10) year period.

**Section 7.4**. **Available Remedies**. The suspension or termination of MSF obligations under this Agreement, or of this Agreement, or the withdrawal of any or all of the Reserve Funds as permitted by this Agreement, are not intended to be the sole or exclusive remedies available to the MSF, and each remedy shall be cumulative and in addition to every other provision or remedy given herein or now or hereafter existing at law, in equity, by statute or otherwise. The Lender shall pay all costs and expenses, including, without limitation, reasonable attorney’s fees and expenses incurred by the MSF in collecting any sums due the MSF under this Agreement, in enforcing any of its rights under this Agreement, or in exercising any remedies available to the MSF.

**ARTICLE VIII**

**MISCELLANEOUS**

**Section 8.1 Notice.** Any notice or other communication under this Agreement shall be in writing and sent by e-mail, or fax, or first class mail, postage prepaid, or by courier to the respective Party at the address listed at the beginning of this Agreement or such other last known addresses, fax numbers or e-mail accounts, and shall be deemed delivered: (i) one business day after an e-mail, fax or courier delivery or (ii) two business days after a mailing date.

**Section 8.2** **Entire Agreement**. This Agreement, together with the Exhibits, sets forth the entire agreement of the Parties with respect to the subject matter, and supersedes all prior agreements, understandings and communications, whether written or oral, with respect to the subject matter of this Agreement.

**Section 8.3 Counterparts; Facsimile/Pdf Signatures.** This Agreement may be signed in counterparts and delivered by fax or in .pdf form or other electronic format, and in any such circumstances, shall be considered one document and an original for all purposes.

**Section 8.4 Severability**. All the clauses of this Agreement are distinct and severable and, if any clause shall be deemed illegal, void, or unenforceable, it shall not affect the validity, legality, or enforceability of any other clause or provision of this Agreement. To the extent possible, the illegal, void, or unenforceable provision shall be revised to the extent required to render the Agreement enforceable and valid, and to the fullest extent possible, the rights and responsibilities of the Parties shall be interpreted and enforced to preserve the Agreement and the intent of the Parties.  Provided, if application of this section should materially and adversely alter or affect a Party’s rights or obligations under this Agreement, the Parties agree to negotiate in good faith to develop a structure that is as nearly the same structure as the original Agreement (as may be amended from time to time) without regard to such invalidity, illegality or unenforceability.

**Section 8.5 Captions**. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**Section 8.6 Governing Law**. This Agreement is a contract made under the laws of the State, and for all purposes shall be governed by, and construed in accordance with, the laws of the State.

**Section 8.7 Relationship between Parties**. The Lender and its officers, agents and employees shall not describe or represent themselves as agents of the State, the MSF, or the MEDC to any individual person, firm, or entity for any purpose.

**Section 8.8. Successors and Assigns**. The MSF may at any time assign its rights in this Agreement. The Lender may not assign its rights or obligations under this Agreement without the prior written consent of the MSF Fund Manager. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

**Section 8.9 Waiver**. A failure or delay in exercising any right under this Agreement will not be presumed to operate as a waiver unless otherwise stated in this Agreement, and a single or partial exercise of any right will not be presumed to preclude any subsequent or further exercise of that right or the exercise of any other right.

**Section 8.10 Termination of Agreement**. Except as terms and conditions which shall survive indefinitely as provided herein, this Agreement shall terminate as provided by Article VII. Provided however, any available remedies to enforce payments of amounts due the MSF hereunder shall survive until all amounts due the MSF are paid in full.

**Section 8.11 Amendment**. This Agreement may not be modified or amended except pursuant to a written instrument signed by the Lender and the MSF.

**Section 8.12 Notices.** All notices, certificates, requests or other communications 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 MSF: Michigan Strategic Fund

300 North Washington Square

Lansing, Michigan 48913

Attention: Loan Manager, Capital Access Program

If to the Lender: Lending Institution

Address

Address

Attention: XXX

**Section 8.13 Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns.

(*remainder of page intentionally left blank*)

The Parties sign this Agreement effective on the Effective Date.

**LENDER**

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

Authorized Signer

Title

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

**MICHIGAN STRATEGIC FUND**

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

Mark Morante

Fund Manager

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

**EXHIBIT A**

**LOAN ENROLLMENT FORM**

**MICHIGAN STRATEGIC FUND**

**SMALL BUSINESS CAPITAL ACCESS PROGRAM**

**Loan Enrollment Form**

|  |  |  |
| --- | --- | --- |
| Lender Information: |  | Borrower Information: |
| Name of Lender: |  | **Name of Borrower:** |
| Lender ID #: |  |  |
| Lender EIN: |  | **Address of Borrower (street address, city, state, zip):** |
| Loan Information: |  |  |
| Lender Loan #: |  | **Primary Contact:** |
| Date Loan Contract Entered Into: |  |  |
| Date of Initial Loan Disbursement: |  | **County Location of Borrower:** |
| Loan Type: (Term, Line of Credit, Other) |  |  |
| Total Loan/Line Amount: |  | [**Census Tract:**](http://www.ffiec.gov/Geocode/default.aspx) |
| Portion of Loan/Line from Non-Private Source(s): |  |  |
|  |  | **Primary Business Activity of Borrower:** |
| Covered Loan/Line Amount: |  |  |
| Total Amount of Lender Payment to Reserve Fund: |  | **NAICS Code:** |
|  |  |  |
| Total Amount of Borrower Payment to Reserve Fund: |  | **Year Business Incorporated/Organized:** |
|  |  |  |
| Use of proceeds: |  | **Borrower Annual Revenue (in last fiscal year):** |
|  |  |  |
| If Increasing an Existing Loan: |  | **Current Number of Employees in Michigan:** |
| Previous covered Loan Amount: |  |  |
| Balance Immediately Prior to Refinancing: |  | **Borrower Full Time Equivalent Employees (FTE):** |
| New Total Covered Loan Amount: |  |  |
|  |  | **Borrower’s Estimate of FTE Jobs Created in Michigan as a Result of this Loan:** |
| Section Regarding Real Estate: | **Y/N** |  |
| Is the Loan to a Real Estate Holding Company? |  | **Borrower’s Estimate of FTE Jobs Retained in Michigan as a Result of this Loan:** |
| Does the Operating Company serve as a co-borrower or guarantor on the loan? |  |  |
| Have you obtained the personal guarantees of any individual holding a 20% or more interest in either company? (a copy enclosed) |  | **Total Private Financing (prior to current loan):** |
| Have you obtained a copy of the lease between the R/E holding company and the operating entity with a minimum term = to the term of the loan? (a copy enclosed) |  |  |
| In filing this loan for enrollment, the Lender makes the representations and warranties specified for the Lender in Appendix A of the Agreement. | | |
| Authorized Signature (Lender): |  | **Date:** |
|  |  |  |
| Printed name (Lender): |  |  |
|  |  |  |
| % Borrower/Lender Payment: |  | **Unique Loan Identifier:** |
| Verify Borrower/Lender Payment Received: |  | **Signed:** |
| MSF/Federal Matching Payment: $ |  | **Date:** |

**EXHIBIT B**

**MICHIGAN STRATEGIC FUND**

**SMALL BUSINESS CAPITAL ACCESS PROGRAM**

**LENDER ASSURANCES**

Each time the Lender seeks to enroll any Loan under the Program, the Lender shall make the following representations and warranties to the MSF by returning a fully finalized and executed form of this Exhibit:

**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”), and as further required by the SSBCI CAP Agreement between Lender and the MSF, originally dated \_\_\_\_\_\_\_\_\_\_\_\_, as such may have been amended from time to time thereafter (“SSBCI CAP Agreement”), for the benefit of the MSF, the Lender represents and warrants to the MSF:**

1. **STATE OF MICHIGAN REQUIREMENTS**
2. **Auditor General, etc**. To ensure compliance with the terms of this SSBCI CAP and the Michigan Strategic Fund Act, MCL125.2001 et. seq.:
3. the Lender shall permit the Auditor General of the State of Michigan (the “Auditor General”), the MSF, the MEDC, and the Chief Compliance Officer of the MSF (the “CCO”), and any representative, member, employee or agent of the foregoing to visit the Lender and any other location where the books and records of the Lender are normally kept to inspect the books and records, including financial records and all other information and data, relevant to the Loan, all Loan documents and the terms of the SSBCI CAP;
4. the Lender shall permit the Auditor General, the MSF, the CCO, and any member, employee or agent of the foregoing to make copies or extracts from information and to discuss the affairs, finances and accounts of the Lender and Borrower related to the Loan, all Loan Documents and the SSBCI CAP Agreement; and
5. the Lender shall cooperate with the CCO, if contacted.

This Section shall survive for a period of three years after the termination of the SSBCI CAP Agreement.

1. **Criminal and Civil Matters**. To the best of Lender’s knowledge, neither Lender nor any of its affiliates, subsidiaries, officers, directors and any person who, directly or indirectly, holds a pecuniary interest in the Lender of 20% or more: (i) have any criminal convictions incident to the application for or performance of a state contract or subcontract, and (ii) have any criminal convictions or have been held liable in any civil proceeding that negatively reflects on the person’s business integrity, including without limitation, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or violation of state or federal antitrust statutes.
2. **Indemnification and Hold Harmless**. The MSF, the State of Michigan, the CCO, the MEDC, its Executive Committee and their respective directors, participants, officers, agents and employees (collectively, the “Indemnified Person(s)”) shall not be liable to the Lender for any reason arising out of or related in any way to the Loan, any Loan Documents, SSBCI, or the SSBCI CAP Agreement. The Lender shall indemnify and hold the MSF, the State of Michigan, and the MEDC and other Indemnified Person harmless against all claims asserted by or on behalf of any individual person, firm or entity (other than an Indemnified Person), arising or resulting from, or in any way connected with, the Loan, any Loan documents, the SSBCI CAP Agreement or any act or failure to act by the Lender, including all liabilities, costs and expenses, including reasonable counsel fees, incurred in any action or proceeding brought by reason of any such claim. The Lender shall also indemnify the MSF, the MEDC and other Indemnified Person from and against all costs and expenses, including reasonable counsel fees, lawfully incurred in enforcing any obligation of the Lender arising from or under the Loan, any Loan documents or the SSBCI CAP Agreement. The Lender shall have no obligation to indemnify an Indemnified Person under this Section if a court with competent jurisdiction finds that the liability in question was solely caused by the willful misconduct or gross negligence of the MSF, the MEDC or other Indemnified Person, unless the court finds that despite the adjudication of liability, the MSF, the MEDC or other Indemnified Person is fairly and reasonably entitled to indemnity for the expenses the court considers proper. The MSF, the MEDC and the Lender agree to act cooperatively in the defense of any action brought against the MSF, the MEDC or another Indemnified Person to the greatest extent possible. Performance of the Lender’s activities contemplated under the SSBCI CAP Agreement is within the sole control of the Lender and its employees, agents and contractors, and an Indemnified Person shall have no liability in tort or otherwise for any loss or damage caused by or related to the actions or failures to act, products and processes of the Lender, its employees, agents or contractors. This Section shall survive termination of the SSBCI CAP Agreement indefinitely.
3. **Jurisdiction**. The Lender agrees that it shall make a good faith effort to resolve any controversies that arise regarding the SSBCI CAP Agreement. If a controversy cannot be resolved, the Lender agrees that any legal actions concerning the SSBCI CAP Agreement shall be brought in the Michigan Court of Claims or, as appropriate, Ingham County Circuit Court in Ingham County, Michigan. This Section shall survive termination of the SSBCI CAP Agreement indefinitely.
4. **Disclosure to the Borrower**. The Lender has disclosed to the Borrower information concerning the SSBCI CAP Agreement and the SSBCI CAP, including the use of SSBCI funds to enhance the extension of Lender’s credit to Borrower.
5. **Compliance with laws**. The Lender has complied with all federal and state laws, rules and regulations pertaining to the making of the Loan.

**B. FEDERAL REQUIREMENTS**

1. **Qualified Financial Institution**. The Lender is a “Financial Institution”. Financial Institution means any insured depository institution, insured credit union, or community development financial institution, as those terms are each defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).
2. **Patriot Act**. The Lender shall perform all of its obligations and duties as required under the Patriot Act of 2001, as amended, including without limitation, the provisions relating to the Customer Identification Program (CIP) and anti-terrorism, and the MSF may so rely on the Lender’s performance of any such requirements, including that the Lender is in compliance with the requirements of 31 CFR 103.121 (relative to anti-money laundering programs); and Lender acknowledges the aforesaid obligations and duties, and further certifies it is in compliance thereunder, including relative to implementation of reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify a person’s identity and determine whether the person appears on any lists of known or suspected terrorist organizations provided to the Lender by any government agency.
3. **Treasury Inspector General.** The Lender shall make available to the Treasurer Inspector General all books and records related to the Loan subject to the Right to Financial Privacy Act, 12 U.S.C § 3401, et. seq.), including detailed Loan records.
4. **Borrower Size**. The Loan has not been extended to support any Borrower that has more than 500 employees.
5. **Purpose of the Loan**.
   1. **CHECK AS APPLICABLE**:

\_\_\_\_ The Loan has not been made to finance a Passive Real Estate Investment (as defined in the SSBCI CAP Agreement) of the Borrower; or

\_\_\_\_ The Loan has been made to finance a Passive Real Estate Investment of the Borrower but only to the extent Borrower is a real estate holding company using the proceeds of the Loan for Passive Real Estate Investment to acquire and hold real or personal property and subsequently leasing the real or personal property to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ an operating company related to Borrower (“Operating Company”), and in the case of such exception, the Lender represents and warrants the following:

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

Both the Borrower and the Operating Company have executed all required certifications, including the Borrower Assurances and the Operating Company Assurances (as each is defined in the SSBCI CAP Agreement) as applicable;

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

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.

* 1. The Loan has not been made in order to place under the protection of the approved SSBCI program prior debt that is not covered under the approved SSBCI program and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender;
  2. The Loan is not a refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender;
  3. The Loan 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;
  4. The Loan 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;
  5. The Loan 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;
  6. The Loan does not exceed the principal amount of $5 million; and
  7. The Loan 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.

1. **No Conviction of Sex Offense.**  No principal of the Lender 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 partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity”.
2. **SBA loan**. No portion of the Loan shall represent any unguaranteed portion of an SBA-guaranteed loan without the MSF obtaining the express prior written consent of the US Department of Treasury.
3. **SSBCI Reporting**. The Lender shall cooperate with the MSF, the MEDC, and any of their representatives, and provide information necessary for the MSF, to provide reports and any other information required from time to time under the SSBCI, including any rules, guidelines and regulations which may be promulgated, or amended from time to time, including without limitation, no later than February 15 following each calendar year in which any part of the Loan was made (and at such other times as requested by the MSF for it to comply with US Department of Treasury and SSBCI requirements), the Lender shall provide the MSF with the following information for each such Loan, in such form as the MSF or the US Department of Treasury may from time to time prescribe:
   1. the census tract and zip code of the Borrower’s principal location in the State of Michigan;
   2. the Lender’s Employer Identification Number (EIN);
   3. the total principal amount of each such Loan loaned/authorized as a line of credit, and of that amount, the portion that is from non-private sources;
   4. the date of the initial disbursement of the Loan;
   5. the Borrower’s annual revenues in its last fiscal year;
   6. the Borrower’s Full Time Equivalent employees;
   7. the 6-digit North American Industry Classification System (NAICS) code for the Borrower’s industry;
   8. the year the Borrower was incorporated or, as applicable, organized;
   9. the estimated number of jobs created or retained as a result of each Loan;
   10. the amount of additional private financing occurring for or on behalf of the Borrower after the closing of the Loan documents; and
   11. as may be requested by the MSF from time to time, any other information from time to time required by the MSF or under the SSBCI, including any rules, guidelines and regulations, which may be promulgated, or amended thereunder.

**LENDER:**

***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

*(Printed Name of Lender)*

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

(*Signature of Authorized Representative*)

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

(*Printed Name Authorized Representative*)

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

( *Title of Authorized Representative*)

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

**EXHIBIT C**

**MICHIGAN STRATEGIC FUND**

**SMALL BUSINESS CAPITAL ACCESS PROGRAM**

**BORROWER ASSURANCES**

Each time the Lender seeks to enroll any Loan under the Program, the Lender shall secure the representations and warranties of the Borrower set forth below and return to the MSF a fully finalized and executed form of this Exhibit:

**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” or “Program”) operated by the Michigan Strategic Fund (the “MSF”), and as further required by the SSBCI CAP Agreement between Lender and the MSF, originally dated \_\_\_\_\_\_\_\_\_\_\_\_, as such may have been amended from time to time thereafter (“SSBCI CAP Agreement”), for the benefit of the MSF and the Lender, the Borrower represents and warrants to the MSF and the Lender:**

**A. STATE OF MICHIGAN REQUIREMENTS**

1. **Michigan Operations**. The Borrower is a business entity formed or doing business, authorized to conduct business, and in good standing, in the State of Michigan. So long as any portion of the Loan is outstanding, the Borrower shall maintain substantially all of its employees for the project that was financed by the Loan (exclusive of sales staff) or operations for the project that were financed in any way with the Loan within the State of Michigan.
2. **Criminal and Civil Matters**. Neither the Borrower nor or any of its affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in the Lender of 20% or more: (i) have any criminal convictions incident to the application for or performance of a state contract or subcontract, and (ii) have any criminal convictions or have been held liable in any civil proceeding that negatively reflects on the person’s business integrity, including without limitation, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or violation of state or federal antitrust statutes.
3. **Other Borrower Covenants:**
   1. **Federally Funded State Program**. Notwithstanding anything to the contrary, Borrower understands that the Lender will seek to enroll the Loan in the SSBCI CAP, an MSF program originally funded by the federal funds arising from the State Small Business Credit Initiative Act of 2010 (title III of the Small Business Jobs Act of 2010, Public Law 111-240, 124 Stat. 2568, 2582.
   2. **Purpose of the SSBCI CAP**. The purpose of the SSBCI CAP is to assist the Lender in making loans that might otherwise not qualify for a loan from the Lender and to provide financing for Michigan small businesses and promote economic development in the State of Michigan.
   3. **Reserve Fund and Payments**. As a condition of having the Loan filed for enrollment in the SSBCI CAP, the Borrower is required to pay a non-refundable premium charge to an administrative account called the Reserve Fund (“Reserve Fund”), which Reserve Fund is established by the MSF to help cover losses that the Lender may sustain on loans enrolled in the SSBCI CAP; and that the Borrower’s payment of its non-refundable premium charge will be collected by the Lender for transmittal to the Reserve Fund, and that other payments or transfers will be made to the Reserve Fund by the Lender and the MSF. **The Borrower understands that it has no, and has not been promised or told by anyone that it has any, legal, beneficial or equitable interest in the aforementioned non-refundable premium charges or any other funds credited to the Reserve Fund, and waives any right, claim or interest to any and all such funds paid or credited to the Reserve Fund.**
   4. **Lender’s Loan. Borrower further understands that the Loan from the Lender is a private transaction between the Lender and Borrower. While the Program may assist the Lender in being able to take more risk than normal in extending the Loan, Borrower acknowledges that the Lender is bearing the risk of the Loan. The Michigan Strategic Fund is not a party to the Loan and plays no role at all in the Lender’s decision regarding whether or not to make the Loan, in the setting of the interest rate, fees, duration, or any other terms or conditions of the Loan, or in any enforcing the Lender’s rights under the Loan.**
   5. **Other Representations and Warranties by Borrower.** Borrower represents and warrants that the proceeds of the Loan will not be used:

* + 1. for the development of a stadium or arena for use by a professional sports team;
    2. to finance the construction or purchase of residential housing;
    3. for the development of a casino regulated by this state under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino at which gaming is conducted under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or property associated or affiliated with the operation of either type of casino described in this subdivision, including, but not limited to, a parking lot, hotel, motel, or retail store;
    4. to provide money to a person who has been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more;
    5. to provide money to a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person’s business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more;
    6. to provide money to a business enterprise to induce qualified businesses or small business to leave this state;
    7. to provide money that would contribute to the violation of internationally recognized workers’ rights, as defined in section 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a country other than the United States, including any designated zone or area in that country; or
    8. to provide money to a corporation or an affiliate of the corporation who is incorporated in a tax haven country after September 11, 2001, while maintaining the United States as the principal market for the public trading of the corporation's stock;

1. **FEDERAL REQUIREMENTS**

**Borrower Size**. Borrower does not have more than 500 employees (as defined in 13 C.F.R. Part 121.106).

**Business Purpose**. The Loan proceeds will be used for a “business purpose.” A business purpose includes, but is not limited to, startup 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 Passive Real Estate Investment purposes, except as set forth in Section 3 below. The definition of business purpose also excludes activities that relate 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.

**Prohibited Use of Loan**. The loan proceeds will not be used for any impermissible purpose under the SSBCI or the SSBCI CAP, including:

* 1. **CHECK AS APPLICABLE**:

\_\_\_\_ The Loan has not been made to finance a Passive Real Estate Investment (as defined in the SSBCI CAP Agreement) of the Borrower; or

\_\_\_\_ The Loan has been made to finance a Passive Real Estate Investment of the Borrower but only to the extent Borrower is a real estate holding company using the proceeds of the Loan for Passive Real Estate Investment to acquire and hold real or personal property and subsequently leasing the real or personal property to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ an operating company related to Borrower (“Operating Company”), and in the case of such exception, the Lender represents and warrants the following:

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

Both the Borrower and the Operating Company have executed all required certifications, including those contained on Exhibit B and Exhibit C, as applicable;

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

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.

* 1. The Loan has not been made in order to place under the protection of the approved SSBCI program prior debt that is not covered under the approved SSBCI program and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender;
  2. The Loan is not a refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender;
  3. The Loan 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;
  4. The Loan 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;
  5. The Loan 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;
  6. The Loan does not exceed the principal amount of $5 million;
  7. The Loan 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;
  8. The Loan will not be used 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;
  9. The Loan will not be used to repay delinquent Federal or State income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
  10. The Loan will not be used to repay taxes held in trust or escrow, e.g. payroll or sales taxes;
  11. The Loan will not be used to reimburse funds owed to any owner, including any equity injection or injection of capital for the business’ continuance; or
  12. The Loan will not be used topurchase any portion of the ownership interest of any owner of the business.

**Borrower Affiliations**. The Borrower is not:

* 1. an executive officer, director, or principal shareholder of the Lender;
  2. a member of the immediate family of an executive officer, director, or principal shareholder of the Lender; or
  3. a related interest of any such executive officer, director, principal shareholder, or member of the immediate family.

For the purposes of the above three borrower 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.

**Borrower Business**. The Borrower is not:

1. 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;
2. 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;
3. 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;
4. 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
5. a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

**No Conviction of Sex Offense**. No principal of the Borrower 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”.

**SSBCI Reporting**. The Borrower shall cooperate with the Lender, the MSF, the MEDC, and any of their representatives, and provide information necessary for the MSF, to provide reports and any other information required from time to time under the SSBCI, including any rules, guidelines and regulations which may be promulgated, or amended from time to time, including without limitation, no later than February 15 following each calendar year in which any part of the Loan was made (and at such other times as requested by the MSF for it to comply with US Department of Treasury and SSBCI requirements), the Lender shall provide the MSF with the following information for each such Loan, in such form as the MSF or the US Department of Treasury may from time to time prescribe:

1. The census tract and zip code of the Borrower’s principal location in the State of Michigan;
2. The Borrower’s Employer Identification Number (EIN);
3. The total principal amount of each such Loan loaned/authorized as a line of credit, and of that amount, the portion that is from non-private sources;
4. The date of theinitial disbursement of the Loan;
5. The insurance premiums paid by the Borrower, the Lender and the MSF;
6. The Borrower’s annual revenues in its last fiscal year;
7. The Borrower’s Full Time Equivalent employees;
8. The 6-digit North American Industry Classification System (NAICS) code for the Borrower’s industry;
9. The year the Borrower was incorporated or, as applicable, organized;
10. The estimated number of jobs created or retained as a result of the Loan;
11. The amount of additional private financing occurring for or on behalf of the Borrower after the closing of the Loan; and
12. As may be requested by the Lender or the MSF from time to time, any other information from time to time required by the MSF or under the SSBCI, including any rules, guidelines and regulations, which may be promulgated or amended thereunder.

**BORROWER:**

***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

*(Printed Name of Borrower)*

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

(*Signature of Authorized Representative*)

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

(*Printed Name Authorized Representative*)

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

( *Title of Authorized Representative*)

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

**EXHIBIT D**

**MICHIGAN STRATEGIC FUND**

**SMALL BUSINESS CAPITAL ACCESS PROGRAM**

**OPERATING COMPANY ASSURANCES**

Each time the Lender seeks to enroll any Loan under the Program 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 and return to the MSF a fully finalized and executed form of this Exhibit:

**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”), and as further required by the SSBCI CAP Agreement between Lender and the MSF, originally dated \_\_\_\_\_\_\_\_\_\_\_\_, as such may have been amended from time to time thereafter (“SSBCI CAP Agreement”), for the benefit of the MSF, the Borrower and the Lender, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Operating Company”) represents and warrants to the MSF and the Lender:**

**Business Purpose**. The Loan proceeds will be used for a “business purpose.” A business purpose includes, but is not limited to, startup 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 (as defined in the SSBCI CAP Agreement) 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.

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

* + - * 1. 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;
        2. is not a refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender;
        3. 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;
        4. 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;
        5. 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, 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 instituted or in which the State has joined as a claimant;
        6. does not exceed the principal amount of $5 million; and
        7. 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.
        8. 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;
        9. is not to repay delinquent Federal or State income taxes unless the borrower has a payment plan in place with the relevant taxing authority;
        10. is not to repay taxes held in trust or escrow, e.g. payroll or sales taxes;
        11. is not to reimburse funds owed to any owner, including any equity injection or injection of capital for the business’ continuance; or
        12. Is not to purchase any portion of the ownership interest of any owner of the business.

1. **Affiliations**. The Operating Company is not:
   1. an executive officer, director, or principal shareholder of the Lender;
   2. a member of the immediate family of an executive officer, director, or principal shareholder of the Lender; or
   3. 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.

1. **Business**. The Operating Company is not:
   1. 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;
   2. 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;
   3. 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;
   4. 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
   5. a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.
2. **Other Representations and Warranties**:
   1. The Operating Company does not have more than 500 employees (as defined in 13 C.F.R. Part 121.106).
   2. The Operating Company is a co-borrower or a guarantor of the Loan, as applicable;
   3. The Operating Company has executed all required certifications;
   4. 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
   5. 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.
3. **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)*

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

(*Signature of Authorized Representative*)

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

(*Printed Name Authorized Representative*)

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

( *Title of Authorized Representative*)

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

**EXHIBIT E**

**MICHIGAN STRATEGIC FUND**

**SMALL BUSINESS CAPITAL ACCESS PROGRAM**

**LOAN CLAIM FORM**

Each time the Lender desires to file a Claim under this Agreement, the Lender shall return to the MSF a fully finalized and executed form of this Exhibit:

1. Name of Lender: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Lender ID #: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Name of Borrower/Loan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Original Amount of Enrolled Loan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. Outstanding Balance of Loan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Immediately prior to charge-off)

1. Claim Details
   1. Principal: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. Accrued Interest (up to 90 days): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total Amount of Claim: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The completed Claim Form, along with proof that the above loan has been charged off, should be submitted to:

The Small Business Capital Access Program

Michigan Strategic Fund

300 N. Washington Square

Lansing, Michigan 48913

Attention: Loan Manager, Capital Access Program

Fax: 517/241-5640

**LENDER:**

***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

*(Printed Name of Lender)*

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

(*Signature of Authorized Representative*)

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

(*Printed Name Authorized Representative*)

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

( *Title of Authorized Representative*)

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