

**STATE SMALL BUSINESS CREDIT INITIATIVE  
FIRST RESTATED AMENDMENT TO THE  
SMALL BUSINESS CAPITAL ACCESS PROGRAM AGREEMENT  
BETWEEN THE  
MICHIGAN STRATEGIC FUND  
AND  
LENDER**

This **FIRST RESTATED AMENDMENT** (the "First Restated Amendment") dated **MONTH XX, 2013** ("Effective Date"), is to the **SMALL BUSINESS CAPITAL ACCESS PROGRAM AGREEMENT** dated **MONTH XX, 20XX** (the "Original CAP Agreement"), as amended by the **AMENDMENT TO THE SMALL BUSINESS CAPITAL ACCESS PROGRAM AGREEMENT** dated **MONTH XX, 20XX** (the "First Amendment") and is between the Michigan Strategic Fund, a public body corporate and politic within the Department of Treasury of the State of Michigan (the "MSF") whose address is 300 North Washington Square, Lansing, Michigan 48913 and **Lender**, (the "Lender") whose address is **XXX**. This First Restated Amendment and the Original CAP Agreement may be collectively referred to as (the "SSBCI CAP Agreement"). The MSF and the Lender are, individually, a "Party" and, collectively, the "Parties".

**RECITALS**

A. 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)").

B. At its May 25, 2011 meeting, the MSF approved the operation of the SSBCI Capital Access Program (the "SSBCI CAP"), an SSBCI Program created by the MSF to disburse SSBCI funds in accordance with the SSBCI.

C. 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.

D. 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.

E. The Parties signed the First Amendment, effective **MONTH XX, 20XX** to begin to utilize SSBCI funds under the SSBCI CAP.

F. The Parties desire to sign this First Restated Amendment to memorialize clarifications required by the US Department of Treasury to the SSBCI CAP, including as to SSBCI support for loans involving passive real estate ownership, and to allow the Lender continue to enroll new loans and utilize SSBCI funds under the SSBCI CAP.

NOW, THEREFORE, in consideration of the recitals and mutual agreements in this SSBCI CAP Agreement, the Parties agree as follows:

1. Effect of First Restated Amendment. The First Amendment is superseded and replaced in its entirety with this First Restated Amendment. Provided however, all Loans

previously deemed “Enrolled Loans” under SSBCI-CAP prior to the Effective Date of this First Restated Amendment shall continue to be deemed “Enrolled Loans” under the SSBCI-CAP; provided further, any actions from and after the Effective Date of this First Restated Amendment with respect to such previously “Enrolled Loans” shall be governed by the terms and conditions of the Original CAP Agreement, as amended by this First Restated Amendment.

2. Definitions/New Terms and Conditions. Any terms and conditions in the Original CAP Agreement as amended by the First Amendment or otherwise that conflict with the following terms and conditions, including those on the Exhibits attached hereto, shall be deemed superseded, modified and replaced, or as otherwise necessary to give effect to the following:

a. The terms, “Enrolled Loan” and “Eligible Loan”, under the Original CAP Agreement are collectively referred to in this Amendment and its Exhibits as “Loan”;

b. The term, “Passive Real Estate Ownership” under the Original CAP Agreement is deleted from the Definitions of the Original CAP Agreement and replaced in its entirety with the following term, and its meaning:

*“Passive Real Estate Investment” means the use of Loan proceeds by the Borrower to invest in real property or personal property acquired and held primarily for sale, lease or investment.*

c. The term, “Program” under the Original CAP Agreement includes the SSBCI CAP;

d. The term, “Small Business”, under the Original CAP Agreement shall be deemed to mean a Borrower with no more than 500 employees (as defined in 13 C.F.R. Part 121.106);

e. Section 2.2 of the Original CAP Agreement is deleted and replaced with the terms and conditions set forth in Exhibit B as if such terms and conditions are fully set therein. Lender shall perform all of its obligations and duties, and shall otherwise comply with all of the terms and conditions under the Loan, the Loan documents, and this SSBCI CAP Agreement, including all of its obligations and duties set forth in the Lender Assurances in Exhibit B.

f. Section 4.2 of the Original CAP Agreement is deleted and replaced in its entirety by the following:

*Section 4.2. Enrolling a Loan. In order to enroll a Loan under the Program, the Lender shall file the Loan for enrollment by delivering to the MSF the following:*

- (a) a fully finalized and executed copy of the CAP Enrollment Form in the form of Exhibit A [see form of Exhibit A attached to this First Restated Amendment, which replaces in its entirety Exhibit 3 under the Original CAP Agreement];*
- (b) a fully finalized and executed copy of the “Lender’s Assurances” in the form of Exhibit B [see form of Exhibit B attached to this First Restated Amendment, which, as noted above, replaces Section 2.2 of the Original CAP Agreement attached];*
- (c) a fully finalized and executed copy of the “Borrower’s Assurances” in the form of Exhibit C [see form of Exhibit C attached to this First Restated Amendment, which replaces in its entirety Exhibit 1 under the Original CAP Agreement];*
- (d) to the extent the Loan is for Passive Real Estate Investment of the Borrower, the Loan shall be made 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, and, in such case, the Lender shall provide a fully finalized and executed copy the "Operating Company's Assurances" in the form of Exhibit D to this First Restated Amendment signed by the operating company defined therein;*

- (e) *Transmittal of the non-refundable premium charges payable as set forth in Section 5.1 in connection with the Loan by the Lender and the Borrower, or evidence that such transmittal has occurred, in accordance with procedures specified by the MSF.*

*The Lender shall file the Loan for enrollment within thirty (30) days after the Lender makes the Loan. For the purposes of this Agreement, the date on which the Lender makes a Loan shall be deemed to be the date on which the Lender first disburses proceeds of the Loan to the Borrower, or such earlier date on which the Loan documents have been executed and the Lender has obligated itself to disburse proceeds of the Loan. For the purposes of this Agreement, the filing of a Loan for enrollment shall be deemed to occur on the date of which the Lender delivers to the MSF, delivers to a professional courier service for delivery to the MSF, or mails to the MSF, the documentation required by this Section.*

- g. Section 4.3 of the Original CAP Agreement is deleted and replaced in its entirety by the following:

*Section 4.3. MSF Acknowledgment. Upon receipt by the MSF of the documentation identified in Section 4.2, the MSF shall enroll the Loan, unless the information provided indicates to the MSF that the Loan is not an Eligible Loan, and the authorized representative of the MSF shall mail or otherwise deliver to the Lender, within thirty (30) business days of such receipt, an acknowledgement of enrollment, bearing the execution signature of an authorized representative of the MSF, including documentation of the amount being transferred by the MSF into the Reserve Fund pursuant to Section 5.1. In the event the information provided to the MSF indicates to the MSF that the Loan is not an Eligible Loan, including that all required documentation has not been submitted as required, the Lender shall have ten (10) business days after the date the MSF notifies the Lender of the deficiencies to resubmit the Loan for enrollment.*

- h. In no event shall any SSBCI funded portion of the Reserve Fund (including any of the combined amounts paid into the Reserve Fund by the Borrower and Lender as a result of any Loan enrolled under the SSBCI-CAP) be used or considered available to cover a Claim resulting from a Loan enrolled by the Lender and the MSF under the MSF's state supported (non-SSBCI) small business capital access program until after March 31, 2017, or at such earlier time as the MSF Fund Manager notifies the Lender in writing ("Federally Funded End Date"). In addition, in the event a Claim made by the Lender before the Federally Funded End Date is denied due to inadequate state (non-SSBCI) supported funds in the Reserve Fund, the Lender may proceed, after the Federally Funded End Date, to submit a Claim resulting from a Loan that was charged off under Section 5.3 of the Original CAP Agreement prior to the Federally Funded End Date.
- i. Until the Federally Funded End Date, in the event any Loan was originally enrolled by the Lender and the MSF under the MSF's state supported (non-SSBCI) small business capital access program, and that Loan was later Refinanced with the increase in the Loan as result of the Refinance being part of an SSBCI-CAP Enrolled Loan ("Federally Funded

Increased Amount of Loan”), any principal reductions on the Loan shall be deemed first to reduce the Federally Funded Increased Amount of the Loan.

- j. In the event any Loan is accepted by the MSF as an Enrolled Loan and later determined not to be an Eligible Loan for any reason, the MSF may immediately withdraw from the Reserve Fund, funds deposited by the MSF that are attributable to such Enrolled Loan and the Enrolled Loan will be automatically be deemed not to be an Eligible Loan and further, automatically deemed dis-enrolled from the Program. The MSF shall provide written notice to Lender of such events.

Except to the extent provided in this First Restated Amendment, the Parties agree that all other terms and conditions of the Original CAP Agreement shall remain unchanged and in effect.

**LENDER**

\_\_\_\_\_  
BY:  
ITS:

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

**MICHIGAN STRATEGIC FUND**

\_\_\_\_\_  
Steven Arwood  
Chairperson and President

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

**EXHIBIT A**  
**LOAN ENROLLMENT FORM**

**MICHIGAN STRATEGIC FUND**  
**SMALL BUSINESS CAPITAL ACCESS PROGRAM**

**Loan Filing Form**

<b>Lender Information:</b>		<b>Borrower Information:</b>
<b>Name of Lender:</b>		<b>Name of Borrower:</b>
<b>Lender ID #:</b>		
<b>Lender EIN:</b>		<b>Address of Borrower (street address, city, state, zip):</b>
<b>Loan Information:</b>		
<b>Lender Loan #:</b>		<b>Primary Contact:</b>
<b>Date Loan Contract Entered Into:</b>		
<b>Date of Initial Loan Disbursement:</b>		<b>County Location of Borrower:</b>
<b>Loan Type: (Term, Line of Credit, Other)</b>		
<b>Total Loan/Line Amount:</b>		<a href="#"><u>Census Tract:</u></a>
<b>Portion of Loan/Line from Non-Private Source(s):</b>		
		<b>Primary Business Activity of Borrower:</b>
<b>Covered Loan/Line Amount:</b>		
<b>Total Amount of Lender Payment to Reserve Fund:</b>		<b>NAICS Code:</b>
<b>Total Amount of Borrower Payment to Reserve Fund:</b>		<b>Year Business Incorporated/Organized:</b>
<b>Use of proceeds:</b>		<b>Borrower Annual Revenue (in last fiscal year):</b>
<b>If Increasing an Existing Loan:</b>		<b>Current Number of Employees in Michigan:</b>
<b>Previous covered Loan Amount:</b>		
<b>Balance Immediately Prior to Refinancing:</b>		<b>Borrower Full Time Equivalent Employees (FTE):</b>
<b>New Total Covered Loan Amount:</b>		
		<b>Borrower's Estimate of FTE Jobs Created in Michigan as a Result of this Loan:</b>
<b>Section Regarding Real Estate:</b>	<b>Y/N</b>	
<b>Is the Loan to a Real Estate Holding Company?</b>		<b>Borrower's Estimate of FTE Jobs Retained in Michigan as a Result of this Loan:</b>
<b>Does the Operating Company serve as a co-borrower or guarantor on the loan?</b>		
<b>Have you obtained the personal guarantees of any individual holding a 20% or more interest in either company? (a copy enclosed)</b>		<b>Total Private Financing (prior to current loan):</b>
<b>Have you obtained a copy of the lease between the R/E</b>		

holding company and the operating entity with a minimum term = to the term of the loan? (a copy enclosed)		
<b>In filing this loan for enrollment, the Lender makes the representations and warranties specified for the Lender in Appendix A of the Agreement.</b>		
<b>Authorized Signature (Lender):</b>		<b>Date:</b>
<b>Printed name (Lender):</b>		
<b>% Borrower/Lender Payment:</b>		<b>Unique Loan Identifier:</b>
<b>Verify Borrower/Lender Payment Received:</b>		<b>Signed:</b>
<b>MSF/Federal Matching Payment: \$</b>		<b>Date:</b>

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## EXHIBIT B

### LENDER 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, the Lender shall make the following representations and warranties to the MSF by returning a fully finalized and executed form of this Exhibit:

### LENDER 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”), and as further required by the SSBCI CAP Agreement between Lender and the MSF, originally dated \_\_\_\_\_, and as amended by that First Restated Amendment dated \_\_\_\_\_, and 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:

#### A. STATE OF MICHIGAN REQUIREMENTS

1. **Auditor General, etc.** To ensure compliance with the terms of this SSBCI-CAP and the Michigan Strategic Fund Act, MCL125.2001 et. seq.:
  - (a) 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;
  - (b) 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 Lender’s SSBCI-CAP Agreement; and
  - (c) 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.

2. **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.
3. **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.

4. **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.
5. **Disclosure to the Borrower.** The Lender has disclosed to the Borrower information concerning the SSBCI CAP, including the use of SSBCI funds to enhance the extension of Lender’s credit to Borrower, and the information set forth on Exhibit 2 to the SSBCI CAP Agreement, as such information may be modified upon written notice to Lender by the MSF Fund Manager from time to time.
6. **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. In accordance with SSBCI guidelines, this Section shall survive until September 27, 2017.
4. **Borrower Size.** The Loan has not been extended to support any Borrower that has more than 500 employees.
5. **Purpose of the Loan.**
  - a) **CHECK AS APPLICABLE:**
    1. \_\_\_\_\_ The Loan has not been made to finance a Passive Real Estate Investment of the Borrower; or
    2. \_\_\_\_\_ 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:
      - a. The Operating Company is a co-borrower or a guarantor of the Loan, as applicable;
      - b. Both the Borrower and the Operating Company have executed all required certifications, including those contained on Exhibit B and Exhibit C, as applicable;
      - c. 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
      - d. 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.
  - b) The Loan has not been made in order to place under the protection of the approved SSBCI-MCSP prior debt that is not covered under the approved SSBCI-MCSP and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender;
  - c) The Loan is not a Refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender;
  - d) 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;

- e) 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;
- f) 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;
- g) The Loan does not exceed the principal amount of \$5 million; and
- h) 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.
6. **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".
7. **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.
8. **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 through February 15, 2017 (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:
- a) the census tract and zip code of the Borrower's principal location in the State of Michigan;
- b) the Lender's Employer Identification Number (EIN);
- c) 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;

- d) the date of the initial disbursement of the Loan;
- e) the Borrower's annual revenues in its last fiscal year;
- f) the Borrower's Full Time Equivalent employees;
- g) the 6-digit North American Industry Classification System (NAICS) code for the Borrower's industry;
- h) the year the Borrower was incorporated or, as applicable, organized;
- i) the estimated number of jobs created or retained as a result of each Loan;
- j) the amount of additional private financing occurring for or on behalf of the Borrower after the closing of the Loan Documents; and
- k) 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.

In accordance with SSBCI guidelines, this Section shall survive until September 27, 2017.

**LENDER:**

\_\_\_\_\_  
(Printed Name of Lender)

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

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

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

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

## EXHIBIT C

### BORROWER 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, the Lender shall secure the representations and warranties of the Borrower set forth below by returning to the MSF a fully finalized and executed form of this Exhibit:

### BORROWER 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 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:**
  - a) **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 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.
  - b) **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.
  - c) **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 Michigan Strategic Fund 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 Michigan

Strategic Fund. **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.**

d) **Other Representations and Warranties by Borrower.** Borrower represents and warrants that the proceeds of the Loan will not be used:

- i. for the development of a stadium or arena for use by a professional sports team;
- ii. to finance the construction or purchase of residential housing;
- iii. 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;
- iv. 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;
- v. 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;
- vi. to provide money to a business enterprise to induce qualified businesses or small business to leave this state;
- vii. 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
- viii. 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;

## **B. FEDERAL REQUIREMENTS**

1. **Borrower Size.** Borrower does not have more than 500 employees (as defined in 13 C.F.R. Part 121.106).
2. **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 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.

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

a) **CHECK AS APPLICABLE:**

1. \_\_\_\_\_ The Loan has not been made to finance a Passive Real Estate Investment of the Borrower; or
2. \_\_\_\_\_ 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:
  - a. The Operating Company is a co-borrower or a guarantor of the Loan, as applicable;
  - b. Both the Borrower and the Operating Company have executed all required certifications, including those contained on Exhibit B and Exhibit C, as applicable;
  - c. 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
  - d. 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.
- b) The Loan has not been made in order to place under the protection of the approved SSBCI-MCSP prior debt that is not covered under the approved SSBCI-MCSP and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender;
- c) The Loan is not a refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender;
- d) 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;
- e) 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;
- f) 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;

- g) The Loan does not exceed the principal amount of \$5 million;
- h) 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;
- i) 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;
- j) 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;
- k) The Loan will not be used to repay taxes held in trust or escrow, e.g. payroll or sales taxes;
- l) 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
- m) The Loan will not be used to purchase any portion of the ownership interest of any owner of the business.

4. **Borrower Affiliations.** The Borrower 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 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.

5. **Borrower Business.** The Borrower 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.
6. **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".
7. **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 through February 15, 2017 (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:
- a) The census tract and zip code of the Borrower's principal location in the State of Michigan;
  - b) The Borrower's Employer Identification Number (EIN);
  - c) 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;
  - d) The date of the initial disbursement of the Loan;
  - e) The insurance premiums paid by the Borrower, the Lender and the MSF;
  - f) The Borrower's annual revenues in its last fiscal year;
  - g) The Borrower's Full Time Equivalent employees;

- h) The 6-digit North American Industry Classification System (NAICS) code for the Borrower's industry;
- i) The year the Borrower was incorporated or, as applicable, organized;
- j) The estimated number of jobs created or retained as a result of the Loan;
- k) The amount of additional private financing occurring for or on behalf of the Borrower after the closing of the Loan; and
- l) 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)

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

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

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

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

## 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: \_\_\_\_\_