

**STATE SMALL BUSINESS CREDIT INITIATIVE 2.0  
CASH COLLATERAL DEPOSIT AGREEMENT  
BETWEEN  
THE MICHIGAN STRATEGIC FUND  
AND  
LENDER**

This **CASH COLLATERAL DEPOSIT AGREEMENT** (the “Deposit Agreement”), dated **MONTH XX, 20XX**, 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**

A. WHEREAS, the American Rescue Plan of 2021, reauthorized and amended the Small Business Jobs Act, 12 USC 5701, et. seq. (“SSBCI”) and appropriated additional funding to the United States Department of Treasury to be allocated and disbursed to approved states to strengthen programs that support private financing to small businesses in accordance with the SSBCI.

B. On January 25, 2022, the MSF Board approved: (i) the creation of the SSBCI 2.0-Michigan Business Growth Fund (the “MBGF”), an SSBCI Program created by the MSF to disburse SSBCI funds in accordance with the SSBCI, and (ii) as part of the MBGF, the creation of a collateral support program designed to enhance the collateral coverage of commercial borrowers (the “SSBCI-MCSP”).

C. On May 18, 2022, 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-MCSP.

E. The Borrower (defined below) desires to obtain a loan from the Lender to (explain Project) (the “Project”).

F. The MSF and the Lender desire to sign this Deposit Agreement to provide for the pledge by the MSF of cash collateral to the Lender under the SSBCI-MCSP.

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

**Section 1. The Loan.** **Borrower**, a **Michigan/Delaware corporation/limited liability company** (the “Borrower”), is receiving the following loan from the Lender, dated on or about the date of this Deposit Agreement. The Loan shall be disbursed in accordance with loan documents among the Borrower, any co-maker, guarantor, endorser, other debtor or obligor of the Loan, and

the Lender, which include without limitation, a loan agreement, note, security agreement(s), and as applicable, other hypothecations, guarantees, and other ancillary and related documents (the foregoing, and this Deposit Agreement, including all Appendices, and applicable Schedules thereto, and any permitted amendments thereto, collectively, the "Loan Documents"):

**Principal Loan Amount:** XXX Dollars (\$XXX) (the "Loan", or the "Loan Limit").

**The Loan is one of the following types of loans marked by an "X" below:**

Term Loan. A term loan (fixed amount with specified repayment schedule (the "Term Loan")); or a

Revolving Line of Credit. A revolving line of credit (open line of credit allowing for cycles of advances and repayment (the "Revolving Loan")); or a

Draw to Term Line of Credit. A non-revolving construction or other line of credit allowing for a fixed drawdown period requiring interest only or other reduced payments for a specified period, converting to a fixed amount term loan with a specified repayment schedule (the "Draw to Term Loan").

The original Loan Documents shall be retained by the Lender, and copies of all Loan Documents shall be forwarded to the MSF upon execution.

**Section 2. Amount of Cash Collateral.** On or about the closing of the Loan Documents, the MSF shall deposit the following principal amount of cash collateral with the Lender in account no. [redacted] in the name of the MSF maintained with the Lender (the "Cash Collateral Account"):

**MSF Cash Collateral:** XXX Dollars (\$XXX) (the "Initial Deposit") (the Initial Deposit, and any Reductions thereto as provided in this Deposit Agreement, collectively, the "Cash Collateral").

**Section 3. Grant of Security Interest in Cash Collateral.** To secure the prompt payment in full when due of the obligations of the Borrower to the Lender under the Loan (as limited by this Section), the MSF grants to the Lender, a continuing security interest, whether now owned or later owned, acquired or arising in the following:

(a) the Cash Collateral Account, and all certificates and instruments, if any, representing or evidencing the Cash Collateral, but in all cases, the security granted by the MSF in favor of the Lender is limited to the amount of the Cash Collateral, and

(b) all proceeds of the Cash Collateral Account up to the amount of the Cash Collateral.

**Notwithstanding anything to the contrary in this Deposit Agreement: (i) the MSF is not granting any security to the Lender in any of the interest or dividends or the like accruing or otherwise arising from the Initial Deposit or Cash Collateral (the "Account Income"), (ii) all Account Income, and Reduction to the Initial Deposit as provided by this Deposit Agreement remain the sole and separate property of the MSF, free and clear of any lien, claim, or interest of the Lender or any third party, and (iii) the extent of the security provided by Cash Collateral is marked by an "X" below:**

\_\_\_\_\_ For a Term Loan, the Cash Collateral Account secures the Term Loan only up to an amount not to exceed the lesser of (i) the Initial Deposit or (ii) XXXX and X/10 percent (XXX%) of the outstanding principal amount of the Term Loan up to the Loan Limit (the "Term Loan Principal Balance"), or

\_\_\_\_\_ For a Revolving Loan, the Cash Collateral secures the Revolving Loan only up to an amount not to exceed the lesser of: (i) the Initial Deposit or (ii) XXXX and X/10 percent (XXX%) of the outstanding principal amount of the Revolving Loan up to the Loan Limit, and as further limited by any restrictions or reductions on further advances which reduce the Loan Limit as may be imposed by the Lender (the "Revolving Loan Principal Balance"), or

\_\_\_\_\_ For a Draw to Term Loan, the Cash Collateral secures the Draw to Term Loan only up to an amount not to exceed the lesser of: (i) the Initial Deposit or (ii) XXXX and X/10 percent (XXX%) of the outstanding principal amount of the Draw to Term Loan up to the Loan Limit, and as further limited by any restrictions or reductions on further advances which reduce the Loan Limit as may be imposed by the Lender (the "Draw to Term Loan Principal Balance").

**Section 4. Perfection of Security Interest.** The MSF authorizes the Lender to file financing statement(s) describing the Cash Collateral and Cash Collateral Account in all public offices deemed necessary by the Lender, if any, and to take any action, including, without limitation, filing all financing statements, continuation financing statements and all other documents that the Lender may reasonably determine to be necessary to perfect and maintain the Lender's security interests in the Cash Collateral and the Cash Collateral Account. The Chairperson of the MSF Board or MSF Fund Manager shall promptly execute and deliver to the Lender any documents that Lender reasonably deems necessary or desirable to perfect the security interests granted in this Deposit Agreement.

**Section 5. Permitted Investments.** If requested by the MSF, the Lender will, from time to time, invest amounts on deposit in the Cash Collateral Account, and any interest, dividends and proceeds from reinvestment, in such investments, other forms of deposit or savings accounts or certificates of deposit offered by the Lender, and as the Chairperson of the MSF Board or MSF Fund Manager may select in writing and the Lender approves (the "Permitted Investments"). Nothing in this section shall be deemed to permit the Lender to invest any amounts on deposit in the Cash Collateral Account, or any interest, dividends, and proceeds from reinvestment, in any other form of account without the express prior written consent of the Chairperson of the MSF Board or MSF Fund Manager.

**Section 6. Termination of Security Interest and Return of the Initial Deposit.** The security interest granted by this Deposit Agreement shall automatically terminate and the Cash Collateral shall be returned to the MSF, upon the first to occur of:

(a) payment or credit in full of an aggregate amount equal to the applicable of the: (x) outstanding Term Loan Principal Balance or (y) the then outstanding Revolving Loan Principal Balance or the then outstanding Draw to Term Loan Principal Balance, in each case after taking into account the then existing restrictions or reductions on further advances which are imposed by the Lender, and subject to the closure of that part of the Revolving Loan or Draw to Term Loan, as applicable, which equals the foregoing amount;

(b) an Event(s) of Default (as defined below) by the Lender;

(c) in the event of, and coincident with, the occurrence of an event described in Section 14(b) (only the extent to which there is a balance remaining after application of the Cash Collateral as provided by Section 14(b)); or

(d) upon the maturity of the Loan as provided by the Loan Documents, as may be amended from time to time by the Lender: (i) with occurrence of an event described in Section 6(a) or (ii) without the Lender taking all action required of it under Section 14(b).

Upon such event, all funds and other investment property representing the Cash Collateral shall be the sole and separate property of the MSF, free and clear of any lien, claim or interest of the Lender or any third party, and shall, along with any Account Income or other funds in the Cash Collateral Account, be disbursed by the MSF at its sole discretion. The Lender agrees to promptly execute and deliver to the MSF all documents that the MSF reasonably deems necessary or desirable to release the security interests granted in this Deposit Agreement, including, without limitation, termination statements.

### **Section 7. Administration of the Loan.**

(a) The Lender shall provide the MSF with copies of all financial statements provided by the Borrower to the Lender, and copies of all Loan Documents. Unless the Chairperson of the MSF Board or MSF Fund Manager specifically exempts one or more specific documents (under terms and conditions acceptable to the Chairperson of the MSF Board or MSF Fund Manager), the Lender shall provide the MSF with any additional documents in its possession or control arising out of, or related to, the Loan or the Loan Documents. **[In addition, to the extent Borrower is a real estate holding company using the proceeds of the Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company, Lender shall deliver to the MSF a fully executed copy of the "Operating Company Certification" in the form of Appendix C, and the applicable schedules thereto, attached to this Agreement upon execution. ADD ONLY FOR HOLDING COMPANY DEALS]**

(b) The Lender shall disclose to the Borrower and any co-maker, guarantor, endorser, other debtor or obligor of the Loan, of the existence of this Deposit Agreement in connection with the making and servicing of the Loan and collecting payments to be made by the Borrower. The Lender shall exercise the same degree of care and discretion in servicing the Loan and collecting payments from the Borrower as it would take in servicing the Loan and collecting payments solely for its own account.

(c) The Lender may amend the terms and conditions of the Loan Documents without the consent of the MSF, provided however, the Lender may not, without the express prior written approval of the Chairperson of the MSF Board or MSF Fund Manager, by amendment or otherwise: (i) increase the amount of the Loan (ii) amend any of the Lender Assurances on any of the Appendices or Schedules, as applicable, or (iii) waive or release any claim against any Borrower or any co-maker, guarantor, endorser, other debtor or obligor of the Loan; or (iv) consent to any release, substitution, or exchange of collateral, except (a) sales of inventory in the ordinary course of business or (b) sales, substitution and exchange of worn or obsolete equipment in the ordinary course of business, or (c) sales of collateral in the event of liquidation of collateral as a result of an occurrence of an event described in Section 14(b); or (v) effectuate any of the circumstances in Section 7(c)(i), Section 7(c)(ii), Section 7(c)(iii) or Section 7(c)(iv).

**Section 8. Fees to MSF.** In addition to the Exit Fee (described below) the Lender shall pay to the MSF a Closing Fee with an Annual Fee as set forth below, and the fees may be charged by the Lender to the Borrower:

(a) a closing fee equal to **XXX percent (XXX%) [up to two percent (2%)]** of the value of the Initial Deposit (“Closing Fee”). This Closing Fee shall be paid by the Lender to the MSF at the time of the closing of the Loan Documents, and

(b) an annual fee shall be charged by the MSF to the Lender (the “Annual Fee”), at the sole discretion of the MSF, and upon prior written notice by the MSF to the Lender (the “MSF Election”). The Annual Fee shall be the product resulting from multiplying the then outstanding balance of the Cash Collateral by **.0X**. (Example: Annual Fee = Cash Collateral balance x **.0X**). The Annual Fee shall be paid by the Lender to the MSF within forty-five (45) days of the date of the notice of the MSF Election. This Section shall survive any termination of this Deposit Agreement until all applicable fees are paid in full to the MSF.

**Section 9. Reductions to Cash Collateral/MSF Access to Cash Collateral.** Lender acknowledges that the balance of the Cash Collateral Account does not determine the amount of Cash Collateral. Regardless of the balance of the Cash Collateral Account, amounts in the Cash Collateral Account available as Cash Collateral shall: (i) not include Account Income, and (ii) shall be reduced by the applicable of following (the following, and including Account Income, are collectively “Reduction(s)“):

(a) in the case of a Term Loan, the reduction in the principal owing under the Term Loan as payments or other credits are applied against the Term Loan multiplied by **X and X/10 percent (X%)**; or

(b) in the case of a Revolving Loan, the amounts in the Cash Collateral Account in excess of the lesser of:

i. the Initial Deposit; or

ii. **X and X/10 percent (X%)** of the sum of the outstanding principal amount of the Revolving Loan plus the undrawn amount of the Lender’s line of credit to make the Revolving Loan, up to the Loan Limit, and as further limited by any restrictions or reductions on further advances which reduce the Loan Limit as may be imposed by the Lender; or

(c) in the case of a Draw to Term Loan, the amounts in the Cash Collateral Account in excess of the lesser of:

i. the Initial Deposit; or

ii. during the draw period, **X and X/10 percent (X%)** of the sum of the outstanding principal amount of the Draw to Term Loan plus the undrawn amount of the Lender’s line of credit to make the Draw to Term Loan, up to the Loan Limit, and as further limited by any restrictions or reductions on further advances which reduce the Loan Limit as may be imposed by the Lender, and subsequent to the draw period, the reduction in the principal owing under the

Term Loan as payments or other credits are applied against the Draw to Term Loan multiplied by **X and X/10 percent (X%)**.

Upon written request from the MSF, the Lender shall pay or release to the MSF the Reductions from the Cash Collateral Account (a "Release"). Nothing in this Section shall be deemed to imply or impose upon the MSF any obligation to increase the amount of the Cash Collateral. Further, effectuation of a Reduction for purposes of determining the amount of Cash Collateral available as security under this Agreement is not dependent on the MSF requesting a Release. The Lender shall provide all detail reasonably requested by the MSF regarding the breakdown of individual payments, credits, fees, or other charges against the Loan, including without limitation, itemization of the foregoing items. After the application of the Cash Collateral (based on availability as determined by Section 3 and taking into account applicable Reductions) pursuant to Section 14(b)(i) or 14(b)(ii), the Lender shall return any remaining balance in the Cash Collateral Account to the MSF within a commercially reasonable amount of time, regardless of any remaining indebtedness of the Borrower, whether requested by the MSF or not. This Section shall survive termination of the Deposit Agreement for a period of one year after termination of the Deposit Agreement.

**Section 10. Representations and Warranties of the MSF.** The MSF represents and warrants that:

(a) the MSF is a public body corporate and politic within the Department of Labor and Economic Opportunity of the State of Michigan. The MSF has the power and authority to enter into and perform its obligations under this Deposit Agreement;

(b) except as disclosed in writing to the Lender or provided by law, no consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Deposit Agreement by the MSF or the performance of any of its obligations under this Deposit Agreement;

(c) the MSF is the legal and beneficial owner of the Cash Collateral free and clear of any lien, security interest, option or other charge or encumbrance except for the security interest created by this Deposit Agreement; and

(d) the pledge of the Cash Collateral under this Deposit Agreement creates a valid first priority security interest in the Cash Collateral, securing the payment of the Term Loan Principal Balance or Revolving Loan Principal Balance, or Draw to Term Loan Principal Balance, whichever is applicable.

**Section 11. Representations and Warranties of the Lender.** The Lender represents and warrants the terms and conditions set forth in Appendix A and further represents and warrants that:

(a) The only recipient of the Loan is the Borrower identified and described in this Deposit Agreement;

(b) Lender shall perform all of its obligations and duties, and shall otherwise comply with all term and conditions, under the Loan Documents and this Deposit Agreement, including all obligations and duties set forth in Appendix A;

(c) Lender has performed a credit analysis of the Borrower satisfactory to the Lender;

(d) upon closing of the Loan, the Lender shall have good and marketable title to the Loan subject to no encumbrance or disability, and except as created by this Deposit Agreement and the Loan Documents, to the actual or constructive knowledge of the Lender, no party to the Loan has any defense or claim against the Lender arising out of the Loan;

(e) the Loan shall be in accordance with applicable Federal and State laws, including but not limited to, laws governing types of loans, interest rates and priority of security; and

(f) to the extent required under law, the security documents for the Loan were, or will be properly recorded in order to validly perfect and maintain a security interest in the collateral securing the Loan, and the Lender will take whatever additional actions may be necessary to validly perfect and maintain a security interest in all collateral securing the Loan.

**Section 12. Additional Obligations of Lender.** The Lender shall:

(a) promptly notify the MSF in writing (and describe in reasonable detail) of any breach of any representation or warranty of the Lender in this Deposit Agreement, or any breach of any representation or warranty of the Borrower in any of the Loan Documents; and

(b) promptly notify the MSF in writing of any of the following actions by or on behalf of the Lender (including providing copies to the MSF of any notices or other documents from Lender arising therefrom): (i) any acceleration of any payment under any of the Loan Documents; (ii) the commencement of any collection proceeding with respect to the Loan against any Borrower or any co-maker, guarantor, endorser, debtor or other obligor of the Loan; (iii) the seizure, sale, transfer, assignment, foreclosure, or attempt to exercise against any collateral securing the Loan, including without limitation, Lender's direction to the Borrower to sell or liquidate the collateral securing the Loan (iv) any forbearance or similar arrangements with respect to the Loan, or (v) any written notice provided by Lender to the Borrower, any guarantor or other endorser with respect to the Loan.

**Section 13. Other Loans by Lender.** The MSF acknowledges that the Lender may have other existing loans with the Borrower and may, in the future, make additional loans to the Borrower. The Lender has no obligation to attempt to collect Loan payments in preference over the collection or enforcement of any other loan with the Borrower. The Lender shall, however, first take control and sell/liquidate (via foreclosure, deed-in-lieu of foreclosure, possession, exercising assignments of rights, or other similar action), or cause the Borrower to take control and sell/liquidate (via foreclosure, deed-in-lieu of foreclosure, possession, exercising assignments of rights, or other similar action), as the case may be, of all of the following of the Borrower: [INSERT PRIMARY COLLATERAL LIST] (collectively, the "Primary Collateral"), and

apply all the gross proceeds thereof to the Loan prior to drawing any Cash Collateral from the Cash Collateral Account to repay the Loan. If, and only to the extent that, the proceeds from the sale or liquidation of all of the Primary Collateral are not sufficient to repay in full the amount due under the Loan, then the Lender may draw Cash Collateral (taking into account applicable Reductions) from the Cash Collateral Account to repay the Loan up to the amount of any such shortfall in accordance with the procedures set forth in Section 14(b) below. Provided that, in such case that the proceeds of the liquidation of the Primary Collateral are sufficient to pay off and otherwise discharge the Loan without drawing on the Cash Collateral from the Cash Collateral Account, any remaining proceeds of the Primary Collateral may be applied by the Lender to pay off any other obligations of the Borrower not arising under the Loan.

**Section 14. Default by the Borrower.** Upon the occurrence of an event of default (or similar term or phrase under the Loan Documents) by the Borrower under the Loan Documents (which is not cured after the expiration of any applicable opportunity to cure):

(a) in addition to all notices to the Borrower required under the Loan Documents, the Lender shall copy the MSF with all notices to the Borrower, and further provide the MSF written notice describing in reasonable detail the circumstances of the event of default; and

(b) prior to drawing Cash Collateral from the Cash Collateral Account to repay the Loan, the Lender shall first take control (via foreclosure, deed-in-lieu of foreclosure, possession, exercising assignments of rights, or other similar action) of any and all Primary Collateral, or provide written direction to the Borrower to sell or liquidate the Primary Collateral, or any combination thereof, and, as the case may be, the Lender shall sell or liquidate, or cause the Borrower to sell or liquidate, the Primary Collateral and apply the proceeds thereof to the Loan. (The gross proceeds from the sale or liquidation of the Primary Collateral (exclusive of any costs and expenses related to such sale or liquidation, or interest, or fees or other charges of any kind) is referred to herein as the "Gross Proceeds from Primary Collateral"; and the difference between the Gross Proceeds from Primary Collateral and the amount due under the Loan shall be deemed the "Remaining Default Principal Balance").

(i) To the extent the Gross Proceeds from Primary Collateral is equal to or greater than the underwritten value assigned by the Lender for the Primary Collateral at the time of the Lender's initial advance of the Loan (the "Underwriting Value for Lending Purposes") then, upon at least forty-five (45) calendar days prior written notice to the MSF, and in accordance with all applicable laws, the Lender may charge, set-off and otherwise apply up to 100% of the then existing balance of the Cash Collateral (after taking into account applicable Reductions), against the Remaining Default Principal Balance.

(ii) To the extent the Gross Proceeds from Primary Collateral is less than the Underwriting Value for Lending Purposes then, upon at least forty-five (45) calendar days prior written notice to the MSF, and in accordance with all applicable laws, the Lender may charge, set-off and otherwise apply up to 100% of the then existing balance of the Cash Collateral, less the Exit Fee as provided by Section 15, (after taking into account applicable Reductions), against the Remaining Default Principal Balance. Notwithstanding any provision in this Agreement to the contrary, in no event shall the Exit Fee exceed 10% of the then existing balance of the Cash Collateral (after taking into account applicable Reductions).



**Section 15. Exit Fee by Lender to MSF.** In the event of, and coincident with, the occurrence of an event described in Section 14(b)(ii), the Lender shall pay or release to the MSF or at its order, a sum equal to the fee derived in accordance with the table following formula (the “Exit Fee”), provided that in the event that the formula set forth below would result in the Exit Fee exceeding 10% of the then existing balance of the Cash Collateral (after taking into account applicable Reductions), then the Exit Fee shall be limited to an amount equal to 10% of the then existing balance of the Cash Collateral (after taking into account applicable Reductions):

$$\frac{(1 - (GPPC/UVLP)) \times CC}{2}$$

where:

GPPC = Gross Proceeds from Primary Collateral  
UVLP = Underwriting Value for Lending Purposes  
CC = Existing Balance of the Cash Collateral

**Section 16. Default by the Lender.** The occurrence of any one or more of the following events or conditions shall constitute an Event(s) of Default by the Lender under this Deposit Agreement, unless a written waiver of the default is signed by the Chairperson of the MSF Board or MSF Fund Manager:

- (a) any representation or warranty made by the Lender under this Deposit Agreement or any of the Loan Documents is incorrect in any material respect;
- (b) any material breach by the Lender of any duty or obligation of the Lender under this Deposit Agreement which is not cured by the Lender to the satisfaction of the MSF within forty-five (45) calendar days after written notice thereof by the MSF to the Lender;
- (c) the appointment of a receiver or custodian over a material portion of the Lender’s assets, which receiver or custodian is not discharged within sixty (60) calendar days of such appointment; o
- (d) any voluntary bankruptcy or insolvency proceedings are commenced by the Lender; or any involuntary bankruptcy or insolvency proceedings are commenced against the Lender, which proceedings are not set aside within sixty (60) calendar days from the date of institution thereof.

Upon the occurrence of any one or more of an Event(s) of Default by the Lender under this Deposit Agreement, in addition to all rights and remedies created by this Deposit Agreement, the MSF shall be entitled to pursue and enforce all rights and remedies available to the MSF, legal and equitable, including without limitation, the right of recoupment, and the right to require the Lender’s books and records related to the Loan, Loan Documents and this Deposit Agreement to be separately audited by an independent certified public accountant selected by the MSF, at the MSF’s sole cost and expense. Provided however, in the event the audit reveals a breach of this Deposit Agreement or the Loan Documents has occurred, the Lender shall reimburse the MSF for the fees and expenses incurred to perform the audit.

No remedy is intended to be the sole and exclusive remedy in case any Event(s) of Default by the Lender under this Deposit Agreement shall occur and each remedy shall be cumulative and in addition to every other provision or remedy now or later existing at law, in equity, by statute or otherwise. All remedies shall be cumulative. The Lender shall pay all costs and expenses, including, without limitation, reasonable attorneys fees and expenses incurred by the MSF in enforcing any obligation of the Lender arising from or under the Loan, any of the Loan Documents, or this Deposit Agreement.

**Section 17. Termination.** Except as provided elsewhere in this Deposit Agreement with respect to certain rights and obligations, this Deposit Agreement shall terminate on the first to occur of i) the charge, set-off, or other application of any portion of the Cash Collateral by the Lender as permitted by, and in accordance with, this Deposit Agreement or ii) the disbursement of all of the Cash Collateral, along with any Account Income or other funds in the Cash Collateral Account to the MSF as permitted by, and in accordance with, this Deposit Agreement.

**Section 18. Notices.** Any notice or other communication under this Deposit Agreement shall be in writing and e-mailed, or mailed by first class mail, postage prepaid, or sent by express, overnight courier to the respective Party at the address listed below or such other last known addresses or e-mail accounts, and shall be deemed delivered one business day after the delivery or mailing date.

If to the Lender: XXXXXXXX  
XXXXXXXXXX  
XXXXXX, Michigan, XXXX  
Attention: XXXXXXXX  
Email: XXXXXXXX

If to the MSF: Michigan Strategic Fund  
c/o Michigan Economic Development Corporation  
Capital Access Team  
300 North Washington Square  
Attention: XXXXXXXXX  
Email: XXXXXXXXXX

**Section 19. Counterparts; Facsimile/Pdf Signatures.** This Deposit Agreement may be signed in counterparts and delivered by facsimile or by pdf, and in any such circumstances, shall be considered one document and an original for all purposes.

**Section 20. Severability.** All of the clauses of this Deposit 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 Deposit Agreement.

**Section 21. Captions.** The captions or headings in this Deposit Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Deposit Agreement.

**Section 22. Governing Law.** This Deposit Agreement is a contract made under the laws of the State of Michigan, and for all purposes shall be governed by, and construed in accordance with, the laws of the State of Michigan.

**Section 23. Relationship between Parties.** The Lender, and its officers, directors, agents and employees shall not describe or represent themselves as agents of the State of Michigan, the MSF, or the MEDC to any person, firm or entity for any purpose.

**Section 24. Successors and Assigns.** Except as otherwise provided by law, any rule of law or regulation (including without limitation, any Executive Order of the State of Michigan), the MSF may not pledge, sub-participate, assign, or otherwise transfer its rights, duties or obligations in this Deposit Agreement and the Loan Documents without the express prior written approval of the Lender. The Lender may not pledge, sub-participate, assign or otherwise transfer its ownership interest in the Loan, or its rights, duties or obligations under this Deposit Agreement or the Loan Documents, without the express prior written approval of the Chairperson of the MSF Board or MSF Fund Manager. This Deposit Agreement shall bind the permitted successors and permitted assigns of the Parties.

**Section 25. Waiver.** A failure or delay in exercising any right under this Deposit Agreement will not be presumed to operate as a waiver unless otherwise stated in this Deposit 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 26. Amendment.** This Deposit Agreement, and except as otherwise permitted in Section 7(c) of this Deposit Agreement, the Loan Documents, may not be modified or amended without the express prior written approval of the Chairperson of the MSF Board or MSF Fund Manager. Any amendment to this Deposit Agreement shall be pursuant to a written instrument signed by the Parties.

**Section 27. Publicity.** At the request and expense of the MSF or the MEDC, the Borrower will cooperate with the MSF or the MEDC to promote the Project through one or more of the placement of a sign, plaque, media coverage or other public presentation at the project or other location acceptable to the Parties.

*(remainder of page intentionally left blank)*

MEDC Legal  
7.14.2022

**LENDER**

\_\_\_\_\_  
Authorized Signer  
Title

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

**MICHIGAN STRATEGIC FUND**

\_\_\_\_\_  
Valerie Hoag  
Fund Manager

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

(LENDER AND MSF SIGNATURE PAGE TO CASH COLLATERAL DEPOSIT AGREEMENT)

## BORROWER ACKNOWLEDGMENT

The undersigned has the requisite authority and power to sign below on behalf of the Borrower, and Borrower acknowledges, and accepts, the terms and conditions set forth in this Deposit Agreement and acknowledges, consents to, and affirms all the terms and conditions on Appendix B.

Borrower acknowledges and accepts that Lender may provide any information or knowledge the Lender may have about the Borrower or about any matter relating to the Loan or the Loan Documents to the U.S. Department of the Treasury, the MEDC and/or the MSF or their successors, and as otherwise set forth on Appendix B.

Borrower shall take all action necessary to cause the terms and conditions in this Deposit Agreement to be satisfied in all respects **INSERT THE REMAINDER OF THIS SENTENCE ONLY IF A SEDI DEAL**, including submitting to the Lender the completed and signed Schedule B-1.

Borrower may also complete, and request its principal owners to complete, Schedule B-2 and if completed, Borrower shall submit each of the Borrower's and the principal owners completed portions of Schedule B-2 and provide to the Lender for purposes of the SSBCI.

**Borrower acknowledges the SSBCI Privacy Notice and Privacy Act Statement, below, and affirms a copy of the SSBCI Privacy Notice and Privacy Act Statement will be provided by the Borrower to any principal owners of the Borrower choosing to complete Schedule B-2.**

### ***SSBCI Privacy Notice and Privacy Act Statement***

#### ***Privacy Notice:***

*Information collection in connection with the Loan will be shared with the U.S. Department of the Treasury (Treasury). Treasury has published a Privacy and Civil Liberties Impact Assessment that describes what Treasury will do with the information your business provides in connection with the Loan. It can be found on the Treasury website. If you have any questions about this document, please email [Privacy@Treasury.gov](mailto:Privacy@Treasury.gov).*

#### ***Privacy Act Statement for Sole Proprietorships:***

*The Privacy Act of 1974 (Privacy Act) protects certain information that the federal government has about "individuals" (United States citizens and lawfully admitted permanent residents). The Privacy Act does not generally apply to businesses, but some federal courts have found that this law applies to sole proprietors (they are deemed "individuals" under the Privacy Act). If you, as the applicant, are a sole proprietor, you may have rights under the Privacy Act.*

*Authority: Small Business Jobs Act of 2010 (SBJA), Title III, 12 U.S.C. § 5701 et seq., as amended by the American Rescue Plan Act of 2021 (ARPA), section 3301; Executive Order No. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (January 25, 2021); and Interim Final Rule, State Small Business Credit Initiative; Demographics-Related Reporting Requirements, 87 Fed. Reg. 13628 (March 10, 2022).*

Purpose: Information in connection with the Loan will be shared with Treasury. This information will be shared with Treasury so it can conduct oversight to ensure compliance with federal law, including requirements related to nondiscrimination and nondiscriminatory uses of federal funds. Treasury also receives this information (including any demographic information provided) to comply with reporting requirements under the authorities listed above and to advance fairness and opportunity in underserved communities in the allocation of federal resources.

Routine Uses: The information you furnish may be shared in accordance with the routine uses outlined in Treasury .013, Department of the Treasury Civil Rights Complaints and Compliance Review Files; Treasury .015, General Information Technology Access Account Records; and Treasury .017, Correspondence and Contact Information. For example, one routine use under Treasury .013 is to disclose pertinent information to appropriate agencies when Treasury becomes aware of a potential violation of civil or criminal law. Under this routine use, Treasury may disclose demographic information to the appropriate agencies if Treasury becomes aware of a violation of applicable antidiscrimination laws. More information about this and other routine uses can be found in the System of Records Notices (SORNs) listed above, which are posted on Treasury's website.

Disclosure: Providing this information is voluntary. **However, failure to furnish the requested information on the attached Appendix B and its Schedules, as applicable (except for the demographic information requested in Schedule B-2) may result in the denial of the Loan. Providing the demographic information in Schedule B-2 is optional. If you decline to provide this information, it will not adversely affect the Loan.**

**NAME OF BORROWER**

\_\_\_\_\_  
Authorized Signer  
Title

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

(BORROWER SIGNATURE PAGE TO CASH COLLATERAL DEPOSIT AGREEMENT)

## APPENDIX A LENDER ASSURANCES

### A. STATE OF MICHIGAN REQUIREMENTS

1. **Auditor General, etc.** To ensure compliance with the terms of this Deposit Agreement 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, the Loan Documents and the terms of this Deposit Agreement;

(b) the Lender shall permit the Auditor General, the MSF, the MEDC, 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, the Loan Documents and this Deposit Agreement; and

(c) the Lender shall cooperate with the CCO, if contacted.

This Section shall survive for a period of three years from the effective date of termination of the Deposit 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, the Loan Documents or this Deposit 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, Loan Documents, this Deposit 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, Loan Documents or this Deposit 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 this Deposit 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 Deposit Agreement indefinitely.

4. **Jurisdiction.** The Lender agrees that it shall make a good faith effort to resolve any controversies that arise regarding this Deposit Agreement. If a controversy cannot be resolved, the Lender agree that any legal actions concerning this Deposit 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 Deposit Agreement indefinitely.
5. **Non-Discrimination and Unfair Labor Practices.** In connection with this Agreement, the Lender agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex (including sexual orientation and gender identity or expression as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, physical or mental disability, or genetic information (as defined in Executive Directive 2019-09) that is unrelated to the individual's ability to perform the duties of the particular job or position. The Lender further agrees that every subcontract or sub-recipient agreement entered into for performance of this Agreement will contain a provision requiring nondiscrimination in employment, as specified in this Agreement, binding upon each subcontractor. This covenant is required, as applicable under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and is consistent with Executive Directive 2019-09, and any breach thereof may be regarded as a material breach of this Agreement.

Under 1980 PA 278, MCL 423.321, *et seq.*, the State shall not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. The United States Labor Relations Board compiles this information. The Lender shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, subsequent to the award of the contract, the name of the Lender as an employer, or the name of a subcontractor, manufacturer, or supplier of the Lender appears in the register.

## **B. SSBCI PROGRAM 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 federal Department of Treasury, the Treasurer Inspector General, and their respective employees, agents or contractors ("Federal Treasury"), all books and records related to the Loan and the use of the Cash Collateral and the Cash Collateral Account, 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 the later of (i) July 31, 2031 or (ii) as otherwise required by 2 CFR §220.334. Lender shall cooperate with the Federal Treasury in any enforcement or compliance review activities of the Federal Treasury in any way related to this Agreement or the laws and regulations in connection therewith. Such enforcement or compliance review may include investigation, arbitration, mediation, litigation, and monitoring, and further, as may be required by Federal Treasury, the Lender shall comply with information requests, on-site compliance reviews and all required reporting.
4. **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, or any other entity, 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".
5. **Civil Rights/LEP Services/Access.** The Lender shall comply, and shall require by contract that any applicable sub-grantee, contractor, subcontractor, successor, transferee, and assignee of Lender shall also comply, with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and other pertinent federal Executive Orders such as federal Executive Order 13166; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., and the Department's implementing regulations at 31 C.F.R. part 23, which are herein incorporated by reference and made a part of this Agreement.

Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented

by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement. Lender acknowledges federal Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Lender understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Lender shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Lender understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Lender's programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

6. **Borrower Size.** The Loan has not been extended to support any Borrower that has more than 750 employees.
7. **Loan Purpose and Other Standards:**
  - (a) 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;
  - (b) The Loan is a new extension of credit to the Borrower by the Lender:
    - i) and, if the Loan is to refinance the Borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender:
      - (1) the Loan is at least 150 percent of the previous outstanding refinanced balance; and
      - (2) the Loan results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the Loan; and
      - (3) the proceeds of the Loan are not used to finance an extraordinary dividend or other distribution, or
    - ii) if the Loan is a refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender:
      - (1) the amount of the Loan is at least 150 percent of the outstanding amount of the matured loan. A matured loan or line of credit only includes such that have matured according to their terms and does not include a loan or line of credit that has been accelerated to maturity; and
      - (2) the Loan is based on a new underwriting of the small business's ability to repay the Loan and a new approval by the Lender; and
      - (3) the prior loan has been paid as agreed and the Borrower was not in default of any financial covenants under the prior loan for at least the previous 36 months (or since origination, if shorter); and
      - (4) the proceeds of the Loan are not used to finance an extraordinary dividend or other distribution.
  - (c) The Loan does not exceed the principal amount of \$20 million;

(d) The interest rate for the Loan may not exceed the National Credit Union Administration's (NCUA) interest rate ceiling for loans made by federal credit unions as described in 12 U.S.C. § 1757(5)(A)(vi)(I) and set by the NCUA board (See for reference, the National Credit Union Administration, Letter to Federal Credit Unions, "Permissible Loan Interest Rate Ceiling Extended," August 2021).

(e) The Loan Documents may not include any of the following provisions: (1) confessions of judgment; (2) prepayment or "double-dipping" fees ("double dipping" occurs when a lender issues new credit to refinance prior credit without forgiving a portion of the fee already paid and results in the borrower paying a fee on top of a fee); or (3) upfront fees or charges paid by the small business, excluding fees to the state program, that exceed 2 percent for loans greater than \$25,000 or \$500 for loans under \$25,000.

(f) The Loan Documents must include disclosure by the Lender of all key terms in an easy-to-understand manner. In addition to all other applicable federal and state securities and lending disclosure laws, rules and regulations which continue to apply and are not superseded by the following, such Lender disclosures should include, for example, the Loan amount; payment obligation and schedule; any terms giving the Lender control over the Borrower's cash balances, cash flows or ownership; any conversion rights and future rights to purchase equity; and any fees or extra costs; and

(g) The Loan shall not be used for the development of a stadium or arena for use by a professional sports team or development of a casino or property associated or affiliated with the operation of a casino as prohibited by the Act (see MCL 125.2088c(3)(a) and (b)), or to induce the Borrower, a qualified business, or small business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers' rights, of workers in a country other than the US, or to fund an entity incorporated in a tax haven country, as prohibited by the Act (see MCL 125.2088c(4)(c), (d), and (e)).

**8. SBA loan.** The Lender is not attempting to enroll any portion of an SBA guaranteed loan without obtaining the MSF's express prior written consent.

**9. Borrower [and Operating Company] Assurances, SEDI, and Demographic Data.** As part of this Agreement, the Lender shall require the Borrower to certify all of the Borrower Assurances set forth on Appendix B, [and the Operating Company to certify all of the Operating Company Assurances set forth on Appendix C].

**IF A SEDI DEAL:** Lender shall also require the Borrower [and the Operating Company], to provide the responses as required and applicable to the Socially and Economically Disadvantaged Individuals (SEDI) made a part of Schedule B-1 as to the Borrower, [and Schedule C-1, as to the Operating Company, respectively].

Lender shall also provide the Borrower and its principal owners [and the Operating Company and its principal owners], the opportunity to complete the Demographic-Related Data made a part of Schedule B-2, and Schedule C-2, respectively.

Lender shall submit to the MEDC, the Deposit Agreement, acknowledged by the Borrower, along with Borrower's fully signed Appendix B and the attached Schedule B-1 [[and the fully signed Operating Company's Assurances set forth on Appendix C, and the attached Schedule C-1], and

if completed and returned to Lender, Lender shall submit to the MSF each of the Borrower's and its principal owners', and the Operating Company and its principal owners' completed portions of Schedule B-2 and Schedule C-2, respectively.

**10. SSBCI Reporting.** The Lender shall cooperate with the MSF, the MEDC, and any of their representatives, to provide information necessary for the MSF to ensure effective administration of the program by providing the MSF no later than January 31 of each year through the termination of this Deposit Agreement with the following information for each such Loan, in such form as the 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 Lender's Regulatory Identification Number;
- (d) 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;
- (e) the date of the initial disbursement of the Loan;
- (f) the Borrower's annual revenues in its last fiscal year;
- (g) the Borrower's Full Time Equivalent employees;
- (h) the Borrower's Employer Identification Number (EIN);
- (i) the 6-digit North American Industry Classification System (NAICS) code for the Borrower's industry;
- (j) the year the Borrower was incorporated or, as applicable, organized;
- (k) the estimated number of jobs created or retained as a result of each Loan;
- (l) the amount of additional private financing occurring for or on behalf of the Borrower after the closing of the Loan Documents; and
- (m) any other information from time to time requested by the MSF.

**[ADD THIS SECTION 11 ONLY FOR HOLDING COMPANY DEALS]**

**11. PASSIVE REAL ESTATE INVESTMENT EXCEPTION**

To the extent Borrower is a real estate holding company using the proceeds of the Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company, the Lender represents and warrants the following:

- (a) [OPERATING COMPANY NAME] is a co-borrower or a guarantor of the Loan, as applicable;

- (b) Both the Borrower and [OPERATING COMPANY NAME] have executed all required certifications, including those contained on Appendix B and Appendix C, as applicable;
- (c) Each natural person holding an ownership interest constituting at least twenty percent (20%) of the Borrower and the [OPERATING COMPANY NAME] has provided a personal guaranty in favor of the Lender for the Loan; and
- (d) Borrower and [OPERATING COMPANY NAME] 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 NAME].

### C. OTHER FINANCIAL COVENANTS

As part of the Lender's Loan Documents, the Lender shall require the Borrower to represent and warrant that:

(a) XXX

(b) XXX

(c) XXX

## APPENDIX B BORROWER ASSURANCES

### A. STATE OF MICHIGAN REQUIREMENTS

1. **Michigan Operations.** So long as any portion of the Loan is outstanding, 100% of any assets being financed by the Loan shall be located in Michigan, the Borrower shall maintain substantially all of its employees for the Project (exclusive of sales staff) or operations for the Project within the State of Michigan.
2. **Criminal and Civil Matters.** Neither the Borrower nor or any of its affiliates, subsidiaries, officers, directors and any person who, directly or indirectly, holds a pecuniary interest in the Borrower 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.

### B. SSBCI PROGRAM REQUIREMENTS

1. **Borrower Size.** Borrower does not have more than 750 employees (as an aggregate when also including all employees of the [OPERATING COMPANY NAME] and to the extent Borrower is a real estate holding company using the proceeds of the Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a [OPERATING COMPANY NAME].
2. **Business Purpose.** The Loan proceeds must be used for a "business purpose." A business purpose includes, but is not limited to, startup costs, working capital, franchise fees, and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or service, 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, and any tangible or intangible assets except goodwill. The definition of business purpose excludes acquiring or holding passive investments in real estate, such as commercial real estate ownership, 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:
  - (a) for any impermissible purpose under the SSBCI or the SSBCI-MCSP, including any impermissible purposes set forth in Appendix A, Section B(7);
  - (b) to repay delinquent Federal or State income taxes unless the borrower has a payment plan in place with the relevant taxing authority;
  - (c) to repay taxes held in trust or escrow, e.g. payroll or sales taxes;
  - (d) to reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance;

(e) to purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under Section 401 of the Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business; or

(f) for the development of a stadium or arena for use by a professional sports team or development of a casino or property associated or affiliated with the operation of a casino as prohibited by the Act (see MCL 125.2088c(3)(a) and (b)), or to induce the Borrower, a qualified business, or small business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers' rights, of workers in a country other than the US, or to fund an entity incorporated in a tax haven country, as prohibited by the Act (see MCL 125.2088c(4)(c), (d), and (e)).

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, 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 or through normal risk of trade;

(b) a business that earns more than half of its annual net revenue from lending activities; unless the business is (1) not a depository institution or a bank holding company certified as a Community Development Financial Institution, or (2) a tribal enterprise lender that is not a depository institution or a bank holding company ;

(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 if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services in connection with the illegal activity, unless such use can be shown to be completely outside of the

business's intended market; this includes direct and indirect marijuana businesses, as defined in the SBA Standard Operating Procedure 50 10 6, Lender and Development Company Loan Programs (effective October 1, 2020) or

(e) a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities, but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business<sup>19</sup>; "gaming activities" for purposes of Tribal SSBCI programs is defined as Class II and Class III gaming under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703.

6. **SSBCI Reporting.** The Borrower shall cooperate with the Lender, the MSF, the MEDC, and any of their representatives, and provide the information described in Appendix A, Section B(3) and B(10) to the Lender and any other information required from time to time by the MSF related to this Deposit Agreement.
7. **Treasury Inspector General.** The Borrower shall make available to the federal Department of Treasury, the Treasurer Inspector General, and their respective employees, agents or contractors ("Federal Treasury"), all books and records related to the Loan and the use of the Cash Collateral and the Cash Collateral Account, 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 [the later of (i) July 31, 2031 or (ii) as otherwise required by 2 CFR §220.334. Borrower shall cooperate with the Federal Treasury in any enforcement or compliance review activities of the Federal Treasury in any way related to this Agreement or the laws and regulations in connection therewith. Such enforcement or compliance review may include investigation, arbitration, mediation, litigation, and monitoring, and further, as may be required by Federal Treasury, the Lender shall comply with information requests, on-site compliance reviews and all required reporting.
8. **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 partner; if a corporation, limited liability company, association or a development company, or any other entity, 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".

**[ADD THIS SECTION 9 ONLY FOR HOLDING COMPANY DEALS]**

**9. PASSIVE REAL ESTATE INVESTMENT EXCEPTION**

To the extent Borrower is a real estate holding company using the proceeds of the Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company, the Borrower represents and warrants the following:

- (a) [OPERATING COMPANY NAME] is a co-borrower or a guarantor of the Loan, as applicable;
- (b) Both the Borrower and [OPERATING COMPANY NAME] have executed all required certifications, including those contained on Appendix B and Appendix C, as applicable;



(c) Each natural person holding an ownership interest constituting at least twenty percent (20%) of the Borrower and the [OPERATING COMPANY NAME] has provided a personal guaranty in favor of the Lender for the Loan; and

(d) Borrower and [OPERATING COMPANY NAME] 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 NAME], and [OPERATING COMPANY NAME] is subject to the same sublease restrictions as Borrower.

(e) Borrower and [OPERATING COMPANY NAME] are affiliated.

INCLUDE SECTION 10 ONLY IF SEDI DEAL, OTHERWISE INSERT "INTENTIONALLY OMIT" FOR THIS SECTION 10

**10. SEDI REQUIREMENTS.** Borrower shall complete the Socially and Economically Disadvantaged Individuals questions set forth on Schedule B-1 attached.

**11. DEMOGRAPHIC-RELATED DATA.** Borrower, and each of its principal owners, may complete the Demographic-Related Data questions made part of Schedule B-2 attached.

**C. OTHER FINANCIAL COVENANTS**

Borrower represents and warrants to the MSF and Lender:

1. XXX

2. XXX

3. XXX

**Schedule B-1**

**[ADD THIS SCHEDULE B-1 ONLY FOR SEDI DEALS, OTHERWISE INSERT  
"INTENTIONALLY OMIT FOR THIS SCHEDULE B-1"]**

**Borrower Certification Related to Business Enterprises Owned and Controlled by  
Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses)**

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively known as participating jurisdictions). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. SSBCI provides funding for participating jurisdictions to support businesses owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses)<sup>1</sup>. This certification provides documentation that an SSBCI loan or investment supported a SEDI-owned business. The information collected from this certification can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable antidiscrimination laws, including, but not limited to, the laws specified in Section IX.b of the Capital Program Policy Guidelines (Compliance with Civil Rights Requirements).

The Borrower is required to provide this certification. The Borrower shall identify all categories in groups (1) through (3) below that apply, including all subcategories in group (1) that apply.

The Borrower hereby certifies to the MSF and the Lender that it is a:

(1) Business enterprise that is owned and controlled<sup>2</sup> by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

- membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;
- gender;
- veteran status;

---

<sup>1</sup> SSBCI funds count toward fulfilling the “expended for” requirement for the \$1.5 billion SEDI allocation and toward qualifying for initial eligible amounts under the \$1.0 billion SEDI incentive allocation if the SSBCI funds have been expended for loans, investments, or other credit or equity support to any of the four groups of businesses set forth in Section IV.a of the SSBCI Capital Program Policy Guidelines. While a participating jurisdiction may reasonably identify group (4) businesses (i.e., those located in Community Development Financial Institution (CDFI) Investment Areas) based on businesses’ addresses from the relevant loan, investment, and credit or equity support applications, certification is required with regard to groups (1) through (3).

<sup>2</sup> The term “owned and controlled” means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community of which the institution services is predominantly comprised of such individuals.

- limited English proficiency;
- disability;
- membership of a federally or state-recognized Indian Tribe;
- long-term residence in a rural community;
- residence in a U.S. territory; or
- membership of another underserved community.<sup>3</sup>

(2)  Address of primary residence of all individuals with 20% or greater ownership of the Borrower:

---

---

---

---

---

(3)  Project property address (new construction projects only):

---

---

---

---

<sup>3</sup> “Underserved communities” are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of equity. Equity is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

MEDC Legal  
7.14.2022

The undersigned is an authorized representative of the Borrower.

**NAME OF BORROWER**

\_\_\_\_\_  
Authorized Signer  
Title

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

(BORROWER SIGNATURE PAGE TO SEDI REQUIREMENTS-SCHEDULE B-1)

**Schedule B-2**  
**BORROWER AND ITS PRINCIPAL OWNERS' DEMOGRAPHIC-RELATED DATA**

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively, "participating jurisdictions"). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. Filling out this form and providing demographic information is optional; applicants are not required to provide the requested information but are encouraged to do so. The entity collecting this information cannot discriminate on the basis of whether an applicant provides this information or based on any information provided on this form. If you decline to provide this information, it will not adversely affect your application. The demographics-related information collected can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable anti-discrimination laws, including, but not limited to, the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d-1 et seq., and Treasury's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and Treasury's implementing regulations, 31 C.F.R. part 28; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and Treasury's implementing regulations at 31 C.F.R. part 23. If you believe you were discriminated against in connection with the provision of the information provided on this form, contact: Director, Office of Civil Rights and Diversity, U.S. Department of the Treasury, 1500 Pennsylvania Ave, N.W., Washington, DC 20220, or by email at [crcomplaints@treasury.gov](mailto:crcomplaints@treasury.gov). PAPERWORK REDUCTION ACT NOTICE - OMB Control Number 1505-0227 An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

**Section A below is for collection of Borrower data, and Section B below is for collection of data for each principal owner of the Borrower.**

**A. Borrower Data.** The Borrower is encouraged to answer all of the questions below. This information is being collected to help ensure that communities' small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting.

**1. Minority-owned or controlled business status**

For purposes of this form, minority individual means a natural person who identifies as American Indian or Alaska Native; Asian American; Black or African American; Native Hawaiian or Other Pacific Islander; Hispanic or Latino/a; or one or more than one of these groups. For purposes of this form, a business is a minority-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by minority individuals;
  - (2) if publicly owned, 51 percent or more of the stock is owned by minority individuals;
  - (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of minority individuals;
- or
- (4) one or more minority individuals have the power to exercise a controlling influence over the business.

**Is the Borrower a minority-owned or controlled business?**       Yes                               No                               Prefer not to respond

**2. Women-owned or controlled business status**

For purposes of this form, a business is a women-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by females;
- (2) if publicly owned, 51 percent or more of the stock is owned by females;
- (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of females; or
- (4) one or more individuals who are females have the power to exercise a controlling influence over the business.

**Is the Borrower a women-owned or controlled business?**       Yes                               No                               Prefer not to respond

**3. Veteran-owned or controlled business status**

For purposes of this form, a business is a veteran-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by veterans;
- (2) if publicly owned, 51 percent or more of the stock is owned by veterans;
- (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of veterans; or
- (4) one or more individuals who are veterans have the power to exercise a controlling influence over the business.

**Is the Borrower a veteran-owned or controlled business?**       Yes                               No                               Prefer not to respond

**NAME OF BORROWER**

\_\_\_\_\_  
**Authorized Signer**  
**Title**

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

(BORROWER SIGNATURE PAGE TO DEMOGRAPHIC-RELATED DATA-SCHEDULE B-2)

**B. Principal Owner Data. Each principal owner of the Borrower is encouraged to answer the questions below.**

This information is being collected to help ensure that communities' small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting. For purposes of this form, a principal owner of the business is a natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity of the business. If a trust owns, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of the business, the trustee is a principal owner.

For each principal owner of the Borrower, indicate which of the following categories the principal owner identifies with. **Submit a separate copy of this table for each principal owner of the Borrower (up to four).**

**1. Ethnicity**

Hispanic or Latino/a  Not Hispanic or Latino/a  Prefer not to respond

**2. Race (select all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> American Indian or Alaska Native | <input type="checkbox"/> Black or African American                 |
| <input type="checkbox"/> Asian                            | <input type="checkbox"/> Native Hawaiian or Other Pacific Islander |
| <input type="checkbox"/> Indian                           | <input type="checkbox"/> Guamanian or Chamorro                     |
| <input type="checkbox"/> Chinese                          | <input type="checkbox"/> Native Hawaiian                           |
| <input type="checkbox"/> Filipino                         | <input type="checkbox"/> Samoan                                    |
| <input type="checkbox"/> Japanese                         | <input type="checkbox"/> Pacific Islander (Other)                  |
| <input type="checkbox"/> Korean                           | <input type="checkbox"/> White                                     |
| <input type="checkbox"/> Vietnamese                       | <input type="checkbox"/> Prefer not to respond                     |
| <input type="checkbox"/> Asian (Other)                    |  |

**3. Middle Eastern or North African Ancestry**

Middle Eastern or North African  Not Middle Eastern or North African  
 Prefer not to respond

**4. Gender**

Female  Male  Nonbinary  
 Prefer to self-describe: \_\_\_\_\_  
 Prefer not to respond

**6. Veteran Status**

Veteran  Non-veteran  Prefer not to respond

\_\_\_\_\_

Signature

\_\_\_\_\_

Printed Name of Principal Owner

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

(OWNER SIGNATURE PAGE TO DEMOGRAPHIC-RELATED DATA-SCHEDULE B-2)



**APPENDIX C**  
**OPERATING COMPANY CERTIFICATION**  
**[ADD THIS APPENDIX C ONLY FOR HOLDING COMPANY DEALS]**

In connection with that certain loan from **LENDER** (the "Lender") to **BORROWER** (the "Borrower"), dated on or about the date of this Deposit Agreement (the "Loan"), and in furtherance of the State Small Business Credit Initiative (the "SSBCI"), Michigan Collateral Support Program (the "SSBCI-MCSP") operated by the Michigan Strategic Fund (the "MSF"), for the benefit of the Lender and the Borrower and in accordance with the SSBCI, **OPERATING COMPANY NAME** represents and warrants to the Lender and the MSF:

1. **Business Purpose.** The Loan proceeds must be used for a "business purpose." A business purpose includes, but is not limited to, startup costs, working capital, franchise fees, and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or service, 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, and any tangible or intangible assets except goodwill. The definition of business purpose excludes acquiring or holding passive investments in real estate, such as commercial real estate ownership, 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 proceeds will not be used:

(a) for any impermissible purpose under the SSBCI or the SSBCI-MCSP, including any impermissible purposes set forth in Appendix A, Section B(4) of the Deposit Agreement;

(b) to repay delinquent Federal or State income taxes unless the borrower has a payment plan in place with the relevant taxing authority;

(c) to repay taxes held in trust or escrow, e.g. payroll or sales taxes;

(d) to reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance;

(e) to purchase any portion of the ownership interest of any owner of the business; or

(f) for the development of a stadium or arena for use by a professional sports team or development of a casino or property associated or affiliated with the operation of a casino as prohibited by the Act (see MCL 125.2088c(3)(a) and (b)), or to induce the Borrower, a qualified business, or small business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers' rights, of workers in a country other than the US, or to fund an entity incorporated in a tax haven country, as prohibited by the Act (see MCL 125.2088c(4)(c), (d), and (e)).

3. **Affiliations.**

(a) **OPERATING COMPANY NAME** is not:

- i. an executive officer, director, or principal shareholder of the Lender;
- ii. a member of the immediate family of an executive officer, director, or principal shareholder of the Lender; or

- iii. a related interest of any such executive officer, director, principal shareholder, or member of the immediate family.

For the purposes of the above 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.

(b) [OPERATING COMPANY NAME] is an affiliate of the Borrower, and together with Borrower’s employees, does not have an aggregate of more than 750 employees.

4. **Business.** [OPERATING COMPANY NAME] 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. **No Conviction of Sex Offense.** No principal of the [OPERATING COMPANY NAME] 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, or any other entity, 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”.

**INCLUDE SECTION 5 ONLY IF SEDI DEAL, OTHERWISE INSERT “INTENTIONALLY OMIT” FOR THIS SECTION 6**

6. **SEDI REQUIREMENTS.** [OPERATING COMPANY NAME] shall complete the Socially and Economically Disadvantaged Individuals questions set forth on Schedule C-1 attached.

MEDC Legal

7.14.2022

7. **DEMOGRAPHIC-RELATED DATA.** [Operating Company Name] and each of its principal owners, may complete the Demographic-Related Data questions made part of Schedule C-2 attached

**OPERATING COMPANY NAME**

\_\_\_\_\_  
Authorized Signer

Title

Date \_\_\_\_\_

(OPERATING COMPANY SIGNATURE PAGE TO APPENDIX C)

**Schedule C-1**

**[ADD THIS SCHEDULE C-1 ONLY FOR SEDI DEALS, OTHERWISE INSERT  
"INTENTIONALLY OMIT FOR THIS SCHEDULE C-1"]**

**[OPERATING COMPANY NAME] Certification Related to Business Enterprises Owned and  
Controlled by Socially and Economically Disadvantaged Individuals  
(SEDI-Owned Businesses)**

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively known as participating jurisdictions). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. SSBCI provides funding for participating jurisdictions to support businesses owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses)<sup>4</sup>. This certification provides documentation that an SSBCI loan or investment supported a SEDI-owned business. The information collected from this certification can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable antidiscrimination laws, including, but not limited to, the laws specified in Section IX.b of the Capital Program Policy Guidelines (Compliance with Civil Rights Requirements).

The **[OPERATING COMPANY NAME]** is required to provide this certification. The **[OPERATING COMPANY NAME]** shall identify all categories in groups (1) through (3) below that apply, including all subcategories in group (1) that apply.

The **[OPERATING COMPANY NAME]** hereby certifies to the MSF and the Lender that it is a:

(1) Business enterprise that is owned and controlled<sup>5</sup> by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

- membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;
- gender;

---

<sup>4</sup> SSBCI funds count toward fulfilling the “expended for” requirement for the \$1.5 billion SEDI allocation and toward qualifying for initial eligible amounts under the \$1.0 billion SEDI incentive allocation if the SSBCI funds have been expended for loans, investments, or other credit or equity support to any of the four groups of businesses set forth in Section IV.a of the SSBCI Capital Program Policy Guidelines. While a participating jurisdiction may reasonably identify group (4) businesses (i.e., those located in Community Development Financial Institution (CDFI) Investment Areas) based on businesses’ addresses from the relevant loan, investment, and credit or equity support applications, certification is required with regard to groups (1) through (3).

<sup>5</sup> The term “owned and controlled” means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community of which the institution services is predominantly comprised of such individuals.

- veteran status;
- limited English proficiency;
- disability;
- membership of a federally or state-recognized Indian Tribe;
- long-term residence in a rural community;
- residence in a U.S. territory; or
- membership of another underserved community.<sup>6</sup>

(2)  Address of primary residence of all individuals with 20% or greater ownership of the Borrower:

---

---

---

---

(3)  Project property address (new construction projects only):

---

---

---

The undersigned is an authorized representative of the **[OPERATING COMPANY NAME]**

**[OPERATING COMPANY NAME]**

\_\_\_\_\_  
Authorized Signer  
Title

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

\_\_\_\_\_

<sup>6</sup> “Underserved communities” are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of equity. Equity is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

MEDC Legal  
7.14.2022

(**OPERATING COMPANY NAME**) SIGNATURE PAGE TO SEDI REQUIREMENTS-SCHEDULE C-1)

## Schedule C-2 DEMOGRAPHIC-RELATED DATA

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively, "participating jurisdictions"). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. Filling out this form and providing demographic information is optional; applicants are not required to provide the requested information but are encouraged to do so. The entity collecting this information cannot discriminate on the basis of whether an applicant provides this information or based on any information provided on this form. If you decline to provide this information, it will not adversely affect your application. The demographics-related information collected can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable anti-discrimination laws, including, but not limited to, the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d-1 et seq., and Treasury's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and Treasury's implementing regulations, 31 C.F.R. part 28; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and Treasury's implementing regulations at 31 C.F.R. part 23. If you believe you were discriminated against in connection with the provision of the information provided on this form, contact: Director, Office of Civil Rights and Diversity, U.S. Department of the Treasury, 1500 Pennsylvania Ave, N.W., Washington, DC 20220, or by email at [crcomplaints@treasury.gov](mailto:crcomplaints@treasury.gov). PAPERWORK REDUCTION ACT NOTICE - OMB Control Number 1505-0227 An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

**Section A below is for collection of [OPERATING COMPANY NAME] data, and Section B below is for collection of data for each principal owner of the [OPERATING COMPANY NAME]**

A. **[OPERATING COMPANY NAME] Data.** The **[OPERATING COMPANY NAME]** is encouraged to answer all of the questions below. This information is being collected to help ensure that communities' small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting.

### 1. Minority-owned or controlled business status

For purposes of this form, minority individual means a natural person who identifies as American Indian or Alaska Native; Asian American; Black or African American; Native Hawaiian or Other Pacific Islander; Hispanic or Latino/a; or one or more than one of these groups. For purposes of this form, a business is a minority-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by minority individuals;
- (2) if publicly owned, 51 percent or more of the stock is owned by minority individuals;
- (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of minority individuals; or

(4) one or more minority individuals have the power to exercise a controlling influence over the business.

Is the [OPERATING COMPANY NAME] a minority-owned or controlled business?

Yes

No

Prefer not to respond

### 2. Women-owned or controlled business status

For purposes of this form, a business is a women-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by females;
- (2) if publicly owned, 51 percent or more of the stock is owned by females;
- (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of females; or
- (4) one or more individuals who are females have the power to exercise a controlling influence over the business.

Is the [OPERATING COMPANY NAME] a women-owned or controlled business?

Yes

No

Prefer not to respond

### 3. Veteran-owned or controlled business status

For purposes of this form, a business is a veteran-owned or controlled business if the business meets one or more of the following:

- (1) if privately owned, 51 percent or more is owned by veterans;
- (2) if publicly owned, 51 percent or more of the stock is owned by veterans;
- (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of veterans; or
- (4) one or more individuals who are veterans have the power to exercise a controlling influence over the business.

Is the [OPERATING COMPANY NAME] a veteran-owned or controlled business?

Yes

No

Prefer not to respond



MEDC Legal  
7.14.2022

[OPERATING COMPANY NAME]

\_\_\_\_\_  
Authorized Signer  
Title

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

([OPERATING COMPANY NAME] SIGNATURE PAGE TO  
DEMOGRAPHIC-RELATED DATA-SCHEDULE C-2)

**B. Principal Owner Data.** Each principal owner of the **OPERATING COMPANY NAME** is encouraged to answer the questions below.

This information is being collected to help ensure that communities' small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting. For purposes of this form, a principal owner of the Business is a natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity of the business. If a trust owns, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of the business, the trustee is a principal owner.

For each principal owner of the **OPERATING COMPANY NAME**, indicate which of the following categories the principal owner identifies with. **Submit a separate copy of this table for each principal owner of the OPERATING COMPANY NAME (up to four).**

**1. Ethnicity**

- Hispanic or Latino/a    Not Hispanic or Latino/a    Prefer not to respond

**2. Race (select all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> American Indian or Alaska Native | <input type="checkbox"/> Black or African American                 |
| <input type="checkbox"/> Asian                            | <input type="checkbox"/> Native Hawaiian or Other Pacific Islander |
| <input type="checkbox"/> Indian                           | <input type="checkbox"/> Guamanian or Chamorro                     |
| <input type="checkbox"/> Chinese                          | <input type="checkbox"/> Native Hawaiian                           |
| <input type="checkbox"/> Filipino                         | <input type="checkbox"/> Samoan                                    |
| <input type="checkbox"/> Japanese                         | <input type="checkbox"/> Pacific Islander (Other)                  |
| <input type="checkbox"/> Korean                           | <input type="checkbox"/> White                                     |
| <input type="checkbox"/> Vietnamese                       | <input type="checkbox"/> Prefer not to respond                     |
| <input type="checkbox"/> Asian (Other)                    |  |

**3. Middle Eastern or North African Ancestry**

- Middle Eastern or North African    Not Middle Eastern or North African    Prefer not to respond

**4. Gender**

- Female    Male    Nonbinary  
 Prefer to self-describe: \_\_\_\_\_  
 Prefer not to respond

**5. Veteran Status**

- Veteran    Non-veteran    Prefer not to respond

MEDC Legal  
7.14.2022

\_\_\_\_\_

Signature

\_\_\_\_\_

Printed Name of Principal Owner

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

(OWNER SIGNATURE PAGE TO DEMOGRAPHIC-RELATED DATA-SCHEDULE C-2)