

**STATE SMALL BUSINESS CREDIT INITIATIVE 2.0
LOAN GUARANTEE AGREEMENT
BETWEEN
THE MICHIGAN STRATEGIC FUND
AND
LENDER**

This **LOAN GUARANTEE AGREEMENT (THE “AGREEMENT”)** dated **MONTH XX, 20XX** (the “Effective Date”), is between the Michigan Strategic Fund, a public body corporate and politic, whose address is 300 North Washington Square, Lansing, Michigan 48913 (the “MSF”) and **LENDER**, whose address is **ADDRESS** (the “Lender”). 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 loan guarantee program designed to facilitate financing of projects for commercial borrowers (the “SSBCI--MLGP”).
- 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-MLGP.
- E. In consideration of the Lender making certain loans to Borrowers, the Lender has requested guarantee support from the MSF under the SSBCI-MLGP. Thus, from time to time, the Lender will request that the MSF approve the Lender’s loans as Enrolled Loans under the SSBCI-SSBCI-MLGP.
- F. Subject to the terms and conditions of this Agreement, the MSF will guarantee payment to the Lender of a portion of Enrolled Loans.

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

Section 1. Definitions; Construction.

(a) Definitions. Except as otherwise defined in this Agreement, all capitalized terms in this Agreement shall have the respective meanings set forth in the definitions contained on Exhibit A.

(b) Construction. Unless the context otherwise requires: (i) words of any gender include each other gender; and (ii) words using the singular or plural number also include the plural or singular number.

Section 2. Credit Facilities; Closing Fee; End Loans; Project Manager; Registration

(a) Lender Funds. The Lender has access to one or more credit facilities to make loans to Borrowers as permitted under this Agreement up to the aggregate amount not to exceed **XXXX Dollars (\$XXXXX)** (the foregoing, collectively, "Credit Facilities"). The Credit Facilities are evidenced by Lender's own assets, or a note and/or such other funding facility agreements of Lender, and such other, security agreement(s), other hypothecations, guarantees, and other ancillary and related documents (the foregoing, and any permitted amendments thereto, collectively, the "Credit Facility Documents").

(b) Fees to the MSF.

i. Closing Fee. A closing fee of **XXXX Dollars (\$XX)** shall be paid to the MSF by the Lender commensurate with execution of this Agreement.

Include this Section 2(b)(ii) if part of the transaction, otherwise indicate "INTENTIONALLY OMITTED"

ii. Annual Fee. An annual fee equal to **XXXX Dollars (\$XX)** of the then outstanding aggregate principal balance of the Enrolled Loans shall be paid by the Lender (the "MSF Annual Fee") beginning on the first day of the twelfth (12th) month following the Effective Date and continue on the first day of each successive twelfth (12th) month thereafter until each of the Enrolled Loans is paid in full. The Lender may charge these fees to the Borrowers.

(c) The End Loans. From time to time as permitted by the Credit Facilities, applicable Credit Facility Documents, and this Agreement, the Lender will enter into a loan agreement with a Borrower setting forth the terms of such End Loan which will be evidenced as applicable, by a note, security agreement(s), other hypothecations, guarantees, and other ancillary and related documents (the foregoing, and this Loan Guarantee Agreement, including all Exhibits, and applicable schedules made a part thereof, and any permitted amendments thereto, collectively, the "End Loan Documents").

(d) Project Manager. The MEDC or MSF shall designate a Project Manager to administer and monitor performance of this Agreement. The Project Manager may be changed at the discretion of the MEDC or the MSF. Notice of the designated Project Manager, and any change, shall be provided to Lender. The initial Project Manager shall be **XXXXXX** of the MEDC, with the current e-mail address of: **XXXXX@michigan.org**.

(e) Lender Registration and Designated Account. To receive permitted payments under this Agreement from the MSF, the Lender must complete registration to receive payments by EFT at the State Integrated Governmental Management Applications (SIGMA) Vendor Self Service (VSS) website.

Section 3. Representations and Warranties of the MSF. The MSF represents and warrants to the Borrower as of the Effective Date:

(a) **Organization and Authority.** The MSF is a public body corporate and politic within a principal department of the State, created under the Act. The MSF has the power and authority to enter into and perform its obligations under this Agreement.

(b) **Consent.** Except as disclosed in writing to the Lender or as otherwise provided by law no consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by the MSF or the performance of any of its obligations under this Agreement. This Agreement is valid, binding, and enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, moratorium, reorganization or other laws or principles of equity affecting the enforcement of creditors' rights generally or by general principles of equity.

Section 4. Representations and Warranties of the Lender. The Lender represents the following to the MSF as of the Effective Date and through the Term:

(a) **Organization, Authority and Consent:**

i. The Lender is duly organized, validly existing and in good standing under the laws of the State of Michigan and has the power to carry on its business as conducted.

ii. The Lender has full power and authority to enter into and perform under this Agreement, the Credit Facility Documents, and the End Loan Documents once executed, and to execute and deliver, and/or cause delivery of, all documents necessary to perform all of its obligations under each of the aforesaid, and to incur the obligations provided for therein, all of which have been duly authorized by all proper and necessary action of the Lender. No consent or approval for the Lender by any public authority is required as a condition to the validity of this Agreement, the Credit Facility Documents or the End Loan Documents that has not already been obtained.

iii. This Agreement, the Credit Facility Documents, and the End Loan Documents once executed by Lender, constitute the valid and legally binding obligations of the Lender, are fully enforceable against the Lender in accordance with their terms, except to the extent that such enforceability may be limited by laws generally affecting the enforcement of creditors' rights and general principles of equity. The Lender will perform all of its obligations and duties under and shall otherwise comply with all of the terms and conditions of, this Agreement, the Credit Facility Documents and the End Loan Documents.

iv. To the knowledge of the Lender, (i) each other party to each of the Credit Facility Documents, and each of the End Loan Documents once executed, has the adequate power and authority and full legal right to enter into each of the respective agreements to which each is a party, and to perform, observe and comply with all of their respective agreements and obligations under each of the respective agreements, (ii) the Credit Facility Documents, and each of the End Loan Documents once executed, constitute the valid and legally binding obligations of the respective parties thereto, and are fully enforceable against such respective parties in accordance with their respective terms, except to the extent that such enforceability may be limited by laws generally affecting the enforcement of creditors' rights and general principles of equity.

(b) **Litigation.** Except as disclosed in writing to the MSF, there are no actions, suits or proceedings pending or, to the knowledge of the Lender, threatened against or affecting Lender, any other property of the Lender, in any court, or before or by an federal, state, municipal

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or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which may result in any material adverse change in the business, properties or assets or in the condition, financial or otherwise, of the Lender. Except as disclosed in writing to the MSF, the Lender is not in default with respect to any order, writ, injunction, decree, or demand of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency, instrumentality, default under which might have consequences which would materially and adversely affect any of its respective business or properties.

(c) Financial Condition. The financial statements of the Lender delivered to the MSF from time to time, shall be complete and correct in all material respects and fairly present the financial condition of the Lender. The financial statements of the Lender, fairly present, the result of the respective operations and transactions as of the date and for the period referred to, and the same have been prepared in accordance with generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the period involved, subject in the case of unaudited financial information to changes resulting from normal year-end audit adjustments and to the absence of footnotes. There are no liabilities, direct or indirect, fixed, or contingent, of the Lender, as of the date of such financial statements other than those (i) reflected therein or in the notes thereto, or (ii) incurred in connection with the execution of this Agreement, the Credit Facility Documents, the End Loan Documents and any other documents or transactions contemplated hereby or thereby. There has been no material adverse change in the financial condition of the Lender since the date of such financial statements.

(d) Adverse Contracts, etc. The Lender is not a party to any contract or agreement or subject to any other restriction or unusually burdensome order of any regulatory commission, board or agency which materially and adversely affects its business, properties or assets or its condition, financial or otherwise. The execution and performance of this Agreement will not result in the creation of any other encumbrance or charge upon any asset of the Lender. No provision of any existing mortgage, indenture, contract, or agreement or affecting Lender's properties is in effect which would conflict with or in any way prevent the execution, delivery or carrying out of the terms of this Agreement.

(e) Liens. The Lender has not made any contract or arrangement of any kind, the performance of which by any party thereto would grant or perfect any security interest on the MSF Guarantee Obligation.

(f) Default. No event or circumstance on the part of the Lender has occurred, and no event has occurred, or in either case is continuing with notice or the passage of time or either, which would constitute an Event of Default under this Agreement.

(g) Conflict of Interest. The Lender further affirms that neither the Lender nor its affiliates, or their respective officers, directors, managers, and members, or employees, have accepted, shall accept, have offered, or shall offer, directly or indirectly, anything of value to influence the MSF, MEDC, its Executive Committee and their respective directors, participants, officers, agents, and employees. Lender also affirms that neither Lender nor its affiliates or their respective officers, directors, managers, and members or employees have paid or agreed to pay any person, other than bona fide employees and consultants working solely for Lender or its affiliates, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the execution of this Agreement.

(h) Full Disclosure. None of this Agreement, or any written statements or certificates furnished by the Lender to the MEDC or the MSF in connection with this Agreement contain, or shall contain, any untrue statement of material fact, or to the best of the Lender's

knowledge, omit or shall omit any material fact necessary to make the statements true. There are no undisclosed facts, which materially and adversely affect or, to the best of the Lender's knowledge, are reasonably likely to materially and adversely affect the properties, business, or condition (financial or otherwise) of the Lender or the ability of the Lender to perform its obligations under this Agreement.

(i) Funds Necessary to Fund End Loans. The Lender has the necessary Credit Facilities to fund End Loans up to the aggregate amount of **XXXX Dollars (\$XXXX)**.

Section 5. Covenants of the Lender. As of the Effective Date and through the Term of this Agreement:

(a) State Required Terms. The Lender acknowledges, and shall comply with, all of the terms and conditions and its obligations under this Agreement, and as set forth on the Exhibits hereto, as applicable to the Lender and made part of this Agreement.

(b) Copies of Documents. Upon request of the Project Manager, unless otherwise required in this Agreement, Lender shall deliver to the Project Manager, true and correct copies of each of fully executed Credit Facility Documents, and each of the fully executed End Loan Documents (together with any due diligence or underwriting analysis thereto), in electronic or other form acceptable to the Project Manager.

(c) Financial Reporting. Within one-hundred eighty (180) calendar days after the end of each of Lender's fiscal years, Lender will cause to be delivered to the Project Manager an annual report containing an audited financial report for the Lender prepared in accordance with GAAP setting forth a balance sheet, income statement and a statement of cash flows of the Lender for such fiscal year, which is certified without qualification (including, without limitation, any "going concern" or like qualification or exception) by an independent certified public accountant and any other information which the Project Manager deems necessary, desirable or appropriate. Upon request of the Project Manager, the Lender shall cause to be delivered to the Project Manager, true and correct copies of the financial statements of each of the Borrowers in the possession or control of the Lender, and if some such statements are not in the possession or control of the Lender, Lender shall take commercially reasonable efforts to request and obtain same from the applicable Borrower.

(d) Annual Compliance Certificate. On January 31 of each year following the Effective Date, Lender shall deliver to the Project Manager a fully completed Annual Compliance Certificate, signed by the Lender, in substantially the form and substance of Exhibit F attached.

(e) Payment of Taxes: Lender has paid and discharged, and shall hereafter promptly pay and discharge, all applicable lawful taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any property, real, personal, or mixed, belonging to it; provided, however, the Lender shall have the right to contest any of the foregoing in good faith and without payment provided that the Lender's interests are adequately protected in the Lender's sole discretion.

(f) Observance of Rules: The Lender covenants and represents and warrants that it has and will continue at all times to promptly comply with all laws, ordinances, regulations, or requirements of any governmental authority relating to its respective business, property, or affairs; provided, however, the Lender shall have the right to contest any of the foregoing in good faith by appropriate proceedings.

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(g) Business Existence: Lender has and will keep and cause to be kept in full force and effect and in good standing, remained properly organized under the laws of the State, and all possess all rights, licenses, leases, and franchises reasonably necessary to conduct the business of the Lender. The Lender shall (i) give the MSF written notice of any change in its name, its state organizational identification number, if it has one, its type of organization, its jurisdiction of organization, and (ii) not make any change in its legal structure that would, as a matter of law, affect its surviving obligations under this Agreement, without the prior written consent of the MSF. The obligations and limitations set forth in the second sentence of this sub-section shall survive indefinitely.

(h) End Loan Documents. Each End Loan, together with their respective End Loan Documents:

i. Must be extended to a Borrower with: (a) at least **XX (XX)** employees and (b) annual revenues of **\$XXXXX** or less;

ii. Must be extended to a Borrower that is organized on a for-profit basis;

iii. Must be a term loan, in the principal amount of at least **\$XXXX** and not to exceed **\$XXXXX**;

iv. Must not exceed a term of **XXXX (XX) years** from the date of the original End Loan, including after giving effect to any and all amendments, restatements, modifications, substitutions, and extensions thereof;

v. Must have a maximum interest rate not to exceed **XXXX percent (XX%)** per annum;

vi. Shall be extended to a Borrower only after the Lender has performed its usual and customary due diligence with respect to each Borrower and each End Loan, including performing a credit analysis of each Borrower and customary underwriting analyses, all in accordance with Lender's established standards, and the results shall be satisfactory to Lender. In addition, for each Borrower that has not produced material revenues from operations, Lender shall require and verify that each Borrower, prior to receiving the End Loan: (a) has participated, or is participating, in business counseling services, (b) has a business plan and cash-flow, in each case, deemed viable by the Lender, and (c) has proper technical assistance deemed acceptable to the Lender.

vii. Shall include the guarantee of payment in favor of the Lender, from each natural person or entity holding an ownership interest constituting at least twenty percent (20%) of the Borrower. In addition to the aforesaid guarantee of payment, each End Loan must be secured by Collateral in some form acceptable to the Lender;

viii. Shall require that End Loan proceeds: (i) 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

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Lobbying Disclosure Act of 1995, P.L. 104-65, as amended and (ii) shall not, in any event, be used for any purpose prohibited by SSBCI and the MSF;

ix. Shall not be made by Lender to reimburse, or to make any payments on, funds owed by the Borrower to any owner, including any equity injection or injection of capital for the Borrower's business' continuance; to purchase any portion of the ownership interest of any owner of the Borrower's business, or to purchase any goodwill associated with the purchase of a business by the Borrower.

x. Must otherwise comply with the SSBCI-MLGP, and the Lender Assurances set forth on Exhibit B.

(i) Additional Covenants of Lender.

i. Upon closing of each End Loan, the Lender shall have good and marketable title to the End Loan subject to no encumbrance or disability, except as to security thereto granted to for the benefit of itself and pursuant to any applicable Credit Facility Documents.

ii. Until each Enrolled Loan is paid in full, the Lender shall maintain a first secured priority interest the Collateral granted by each Borrower as security for the payment and performance of the Borrower's obligations under the applicable End Loan Documents; provided, however, the Lender may share such first secured priority interest with another lender on a pari passu, pro rata basis; provided, further, that the MSF acknowledges that the End Loans may not be fully collateralized.

iii. To the extent required under law, the security documents made part of the End Loan Documents are or will be properly recorded, and the Lender shall take all other action as may be necessary, in order to validly perfect and maintain a first secured interest in all Collateral securing each End Loan and to permit the Lender to exercise remedies against the Collateral.

iv. The Lender shall not renew, refinance, extend, amend, or otherwise modify in any way any of the End Loan Documents of any Enrolled Loan without the prior written consent of the Project Manager; except as permitted under this subsection. The Lender shall not change any terms of any Exhibits, or any applicable schedules thereto, made part of this Agreement. The Lender may amend the End Loan Documents without the prior written consent of the Project Manager so long as such amendments do not (a) extend the final maturity of any of the End Loans, (b) increase the maximum principal amount of any of the End Loans or change the rate of interest on any of the End Loans, (c) release or discharge any portion of the collateral securing any of the End Loans 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 (d) release or discharge any Borrower or any other obligor (including any guarantor) from any of their obligations under any of the End Loan Documents. The Lender shall provide notice to the Project Manager of any amendments to the End Loan Documents, along with executed copies of any applicable amendment documents, whether or not consent is required hereunder;

v. Lender has adopted prudent and diligent recovery policies and practices with respect to the End Loans, and subject to the terms and conditions of this Agreement, the Lender shall service each End Loan in accordance with Lender's loan policies, and in any event, with the same care, skill, prudence, and diligence of prudent loan servicers servicing similar loans;

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vi. The Lender shall provide to the Project Manager copies of any notices of default or similar deficiencies received by Lender under any of Credit Facility Documents or any of the End Loan Documents;

vii. Upon the written request of the Project Manager, the Lender shall provide to the Project Manager copies of any reports provided to Lender by any Borrower under End Loan Documents for any Enrolled Loan.

viii. Upon the written request of the Project Manager, the Lender shall provide to the Project Manager copies of any notices of default or similar deficiencies sent, or received by, the Lender under End Loan Documents for any Enrolled Loan.

(j) Disclosure to the Borrower. As part of each End Loan, the Lender shall disclose to the Borrower information concerning the SSBCI-MLGP and the Loan Guarantee Agreement, including that the SSBCI-MLGP enhances the extension of Lender's credit to Borrower.

(k) Lender Assurances. The Lender represents and warrants, otherwise covenants, and shall comply with all the Lender Assurances set forth on Exhibit B (except as such are further limited by Section 5(h)).

Section 6. Guarantee by the MSF

(a) MSF Guarantee Obligation. Subject to the terms and conditions of this Agreement, through the end of the Term, the MSF guarantees to Lender to the extent set forth herein the payment of that portion of a Borrower's Indebtedness arising out of a Delinquent Enrolled Loan which results in an Authorized Claim under this Agreement ("MSF Guarantee Obligation").

(b) Limitations on MSF Guarantee Obligation; Losses; Recoveries.

i. Limits of MSF Guarantee Obligation. Notwithstanding anything to the contrary contained in the Agreement, but subject to the suspension, revocation and termination provisions of this Agreement, the MSF Guarantee Obligation is limited to **XXXX percent (XX%)** of any one Enrolled Loan, subject to the further limitation that the MSF Guarantee Obligation in the aggregate for all Enrolled Loans shall not exceed a total amount equal to the lesser of: (a) **XXXX Dollars (\$XXXX)**, or (b) **XXXX percent (XX%)** of the aggregate principal of Enrolled Loans made by Lender (the aforesaid limitations on the MSF Guarantee Obligation referred to herein as the "MSF Guarantee Cap").

ii. Losses Incurred by Lender on Authorized Claim. Losses incurred by the Lender for a particular Delinquent Enrolled Loan which results in an Authorized Claim shall, for purposes of this Agreement, be borne as follows:

1) First, an amount equal to ten percent (10%) of the then remaining outstanding principal balance of the Delinquent Enrolled Loan shall be paid to Lender by the MSF as part of the MSF Guarantee Obligation, subject to the MSF Guarantee Cap, and further subject to the written approval by the Project Manager after review of Part I Claim Request of the Authorized Claim Form;

2) Second, the Lender shall diligently pursue the collection of all amounts owed by the Borrower under the End Loan Documents for the particular Delinquent Enrolled Loan until the Delinquent Enrolled Loan is brought current, collected in full, reduced to a Judgment, settled, or upon the reasonable judgment of the Lender, other action is desired

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(collectively, the "Legal Action"). The Lender shall conduct all Legal Action on the Delinquent Enrolled Loan no less diligently than for their non-guaranteed portfolio, and in a prompt, cost-effective and commercially reasonable manner, consistent with prudent lending standards. Lender shall cause one hundred percent (100%) of the proceeds of the liquidation of all Collateral for the Delinquent Enrolled Loan and proceeds recovered from all guarantors of the Delinquent Enrolled Loan, after payment of reasonable costs and expenses of the liquidation and recovery actions, to be deducted from then remaining outstanding principal balance of the Delinquent Enrolled Loan;

3) Third, after all the aforementioned deductions have been applied, the lesser of: (i) seventy percent (70%) of the outstanding principal balance of the Enrolled Loan as of the Part I Claim Request Date or (ii) the amount equal to the then remaining outstanding principal balance of the Delinquent Enrolled Loan shall be paid to Lender by the MSF as part of the MSF Guarantee Obligation, subject to the MSF Guarantee Cap, and further subject to the written approval by the Project Manager after review of Part II Claim Request of the Authorized Claim Form;

4) Fourth, one hundred percent (100%) of the then remaining outstanding Delinquent Enrolled Loan shall be borne by the Lender.

(c) Reimbursement to MSF. After the MSF has made a payment on an Authorized Claim, the Lender shall cause any recovery from or on behalf of a Borrower on the Delinquent Enrolled Loan which resulted in the MSF payment on the Authorized Claim to be reimbursed to the MSF as soon as practical after recovery, to the extent of the MSF payment, and the amount of any such reimbursement shall be deemed not to have been paid by the MSF for purposes of calculating whether the MSF Guarantee Cap has been reached. The obligation of the Lender to reimburse the MSF provided in this section shall survive indefinitely.

Section 7. Enrolling a Loan.

(a) Loan Enrollment Form. As a condition to the effectiveness of the MSF Guarantee Obligation, an End Loan must be an Enrolled Loan in the SSBCI-MLGP. To request that an End Loan become an Enrolled Loan, the Lender shall deliver in electronic form to the Project Manager (the following, collectively, the "Loan Enrollment Form):

i. a copy of the Loan Enrollment Form completed and signed by the Lender in the form of Exhibit C, together with the required attachments more fully described therein, and additionally including without limitation,

1) the completed and signed Borrower's Acknowledgment and Borrower's Assurances made a part thereof (see Exhibit C-1);

a. and the completed and signed Borrower Certification Related to Business Enterprises Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses) (see Schedule C-2);

b. and if submitted by the Borrower, each of the Borrower's and principal owners of Borrower completed and signed Borrower and Its Principal Owners' Demographic-Related Data, (see Schedule C-3);

ii. In addition, to the extent Borrower is a real estate holding company using the proceeds of the End 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:

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1) a copy of the completed and signed "Operating Company Certification" in the form of Exhibit D:

a. and the completed and signed Operating Company Certification Related to Business Enterprises Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses) (see Schedule D-1);

b. and if submitted by Operating Company, each of the Operating Company's and its principal owners completed and signed Operating Company and Its Principal Owners' Demographic-Related Data, (see Schedule D-2).

(b) Lender Filing of the Loan Enrollment Form. The Lender shall submit the completed Loan Enrollment Form, together with all required and completed Exhibits, schedules and attachments required thereunder, to the Project Manager on or about the date, and in no event later than thirty (30) days after, the Lender makes the End Loan to the Borrower. For the purposes of this Agreement, the date on which the Lender makes the End Loan shall be deemed to be the date on which the Lender first disburses all or any portion of the proceeds of the End Loan to the Borrower, or such earlier date on which the End Loan Documents have been executed.

(c) Enrollment Period. End Loans that are closed by the Lender more than thirty-six (36) months after Effective Date may not be enrolled in the SSBCI-MLGP under this Agreement.

(d) Project Manager Review. The Project Manager shall within thirty (30) business days after receipt of the Loan Enrollment Form from the Lender, do one of the following:

i. provide a written request in electronic or other form to the Lender to submit further information necessary for the Project Manager to process the Loan Enrollment Form, and the Lender shall have fifteen (15) business days thereafter to submit the additional information to the Project Manager. Upon failure of the Lender to submit the requested information to the satisfaction of the Project Manager, the Project Manager shall proceed as provided in Section 7(c)(iii) below. Within fifteen (15) business days after receipt of the additional information requested by, and to the satisfaction of the Project Manager, the Project Manager shall proceed as provided in Section 7(c)(ii) or Section 7(c)(iii) below.

ii. approve the End Loan as an Enrolled Loan by signing and delivering in electronic or other form the written approval of the End Loan; or

iii. reject the End Loan as an Enrolled Loan by signing and delivering in electronic or other form the written rejection of the enrollment of the End Loan and provide a written explanation that the Lender has failed to provide the required information, or the End Loan is not otherwise an Enrolled Loan, or the Lender is otherwise not in compliance with this Agreement.

The Project Manager, the MEDC and the MSF reserve the right in their sole discretion to require further information and submissions from the Lender and Borrower to process any Loan Enrollment Form. For the purposes of this Agreement, a particular End Loan shall not be deemed an Enrolled Loan until the date the Project Manager provides written approval thereof. Provided further, the application of the MSF Guarantee Obligation against the aggregate of all Enrolled Loans is, notwithstanding anything to the contrary, subject to the MSF Guarantee Cap.

(e) Withdrawal of Enrolled Loan by Lender.

i. Payment of the End Loan. Upon payment in full of an Enrolled Loan (and full reimbursement to the MSF of any monies paid on the MSF Guarantee Obligation on an Authorized Claim arising out of the Enrolled Loan, if any), the Lender shall notify the Project Manager

and sign and deliver in electronic form to the Project Manager a copy of the Loan Enrollment Form for the particular End Loan and noting thereon Lender's withdrawal of that End Loan as an Enrolled Loan.

ii. Discretion of Lender. Upon the written request by the Lender, and prior to any payment by the MSF on a particular Authorized Claim arising out of an Enrolled Loan, the particular End Loan shall be withdrawn as an Enrolled Loan.

Section 8. Authorized Claims; Payment on the MSF Guarantee Obligation

(a) Authorized Claim Form. As a condition to the effectiveness of the MSF Guarantee Obligation, Lender's claim for any payment under the MSF Guarantee Obligation must be pursuant to an Authorized Claim under this Agreement.

(b) Part I Claim Request Submission. To request payment on an Authorized Claim, the Lender shall first deliver in electronic form to the Project Manager the completed Part I Claim Request of the Authorized Claim Form to the satisfaction of the Project Manager, signed by the Lender, in the form of Exhibit E ("Part I Claim Request"). The Lender shall submit the Part I Claim Request to the Project Manager within thirty (30) calendar days after an Enrolled Loan becomes a Delinquent Enrolled Loan.

(c) Part I Claim Request Review by Project Manager. The Project Manager shall within thirty (30) business days after receipt of Part I Claim Request from the Lender, do one of the following:

i. provide a written request in electronic or other form to the Lender to submit further information necessary for the Project Manager to process the Part I Claim Request, and the Lender shall have fifteen (15) business days thereafter to submit the additional information to the Project Manager. Upon failure of the Lender to submit the additional information to the satisfaction of the Project Manager, the Project Manager shall proceed as provided in Section 8(c)(iii) below. Within fifteen (15) business days after receipt of the additional information requested by, and to the satisfaction of the Project Manager, the Project Manager shall proceed as provided in Section 8(c)(ii) or Section 8(c)(iii) below; or

ii. approve the Part I Claim Request by signing and delivering in electronic or other form the written approval of the Part I Claim Request, and the approved amount of payment under MSF Guarantee Obligation; or

iii. reject the Part I Claim Request by signing and delivering in electronic or other form the written rejection of the Part I Claim Request and provide a written explanation that the Lender has failed to provide the required information, or the claim is otherwise not an Authorized Claim, or the Lender is otherwise not in compliance with this Agreement.

(d) Part II Claim Request Submission. To request further payment from the MSF on an Authorized Claim, the Lender shall deliver in electronic form to the Project Manager the completed Part II Claim Request of the Authorized Claim Form (using the particular Authorized Claim Form used for the Part I Claim Request), to the satisfaction of the Project Manager, and signed by the Lender, included in the form of Exhibit E ("Part II Claim Request"). The Lender shall not submit the Part II Claim Request until at least ninety (90) calendar days after the Lender's submission of the Part I Claim Request.

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(e) Part II Claim Request Review by Project Manager. The Project Manager shall within thirty (30) business days after receipt of Part II Claim Request from the Lender do one of the following:

i. provide a written request in electronic or other form to the Lender to submit further information necessary for the Project Manager to process the Part II Claim Request, and the Lender shall have twenty (20) business days thereafter to submit the additional information to the Project Manager. Upon failure of the Lender to submit the additional information to the satisfaction of the Project Manager, the Project Manager shall proceed as provided in Section 8(e)(iii) below. Within twenty (20) business days after receipt of the additional information requested by, and to the satisfaction of the Project Manager, the Project Manager shall proceed as provided in Section 8(e)(ii) or Section 8(e)(iii) below; or

ii. approve the Part II Claim Request by signing and delivering in electronic or other form the written approval of the Part II Claim Request, and the approved amount of payment under the MSF Guarantee Obligation; or

iii. reject the Part II Claim Request by transmitting to the Lender in electronic or other form the written rejection of the Part II Claim Request and provide a written explanation that the Lender has failed to provide the required information, or the claim is otherwise not an Authorized Claim, or the Lender is otherwise not in compliance with this Agreement.

The Project Manager, the MEDC and the MSF reserve the right in their sole discretion to require further information and submissions from the Lender to process any Part I Claim Request or Part II Claim Request prior to any payment on the MSF Guarantee Obligation. For the purposes of this Agreement, any claim by the Lender on the MSF Guarantee Obligation shall not be deemed any part of an Authorized Claim until the date the Project Manager signs the written approval of the applicable payment due under Authorized Claim. Further, for the avoidance of doubt, any payment by the MSF on the MSF Guarantee Obligation is subject to the terms and conditions of this Agreement.

Section 9. 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 Agreement, unless a written waiver, or similar action is signed the MSF Fund Manager, and then only to the extent, and for the time period specifically stated, in such written waiver, or similar action:

(a) any representation or warranty made by the Lender to the MSF or the MEDC in this Agreement is incorrect in any material respect;

(b) any information submitted at any time to the Project Manager, the MEDC, or the MSF under this Agreement in support of any Enrolled Loan, Authorized Claim, within any Loan Enrollment Form, or Authorized Claim Form, or for any other purpose under this Agreement, is incorrect in any material respect;

(c) any material breach by the Lender of any obligation of the Lender under this Agreement, which breach, if deemed curable in the discretion of the MSF Fund Manager, is not cured to the satisfaction of the MSF Fund Manager, within twenty-five (25) business days after written notice thereof by the MSF Fund Manager, or within such longer period of time as determined in writing by the MSF Fund Manager;

(d) the Lender is in default, violation, breach, or non-compliance under any Credit Facility Documents or any End Loan Documents, and Lender remains in default thereunder

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after the expiration of any applicable cure period;

(e) the Lender is in default, violation, breach, or non-compliance, of any kind or nature under any agreement or requirement, including submission of reports, with the MEDC, or any department or agency with the State, which is not cured to the satisfaction of the MSF Fund Manager, within twenty-five (25) business days after written notice thereof by the MSF Fund Manager, or within such longer period of time as determined in writing by the MSF Fund Manager;

(f) 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; or

(g) 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.

Section 10. Remedies.

(a) Upon the occurrence of any one or more of a Default or an Event of Default under this Agreement, the MSF shall be entitled to pursue and enforce all rights and remedies available to the MSF, legal and equitable, including without limitation (i) in the case of a Default or Event of Default, the right to: (x) suspend enrollment of any End Loans, and (y) the right to suspend any payment of any portion of the MSF Guarantee Obligation; and (ii) in the case of any an Event of Default, the (z) right to revoke any payment of any portion of the MSF Guarantee Obligation, (aa) the right to revoke any previous approval of any Enrolled Loan or Authorized Claim, (bb) the right of recoupment as to any payment made on the MSF Guarantee Obligation, and (cc) the right to terminate this Agreement, with no obligation to pay any portion of the MSF Guarantee Obligation. No remedy is intended to be the sole and exclusive remedy 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.

(b) Notwithstanding Section 10(a), above, if there is an Event of Default under Section 9(b) as a result of information which originated from Borrower and the Lender justifiably relied upon it when the Lender submitted it to the Project Manager, MSF, or MEDC, the remedies in Section 10(a) shall be limited to such actions: (A) involving that particular Borrower's End Loan, including without limitation, no enrollment of the End Loan in the SSBCI-MLGP, dis-enrollment of the End Loan from the SSBCI-MLGP, suspension, termination, or revocation of, any MSF payment thereon, and the right to recoup any MSF payment arising therefrom, and (B) as to future End Loans, including without limitation, the right to suspend or terminate any enrollment as an Enrolled Loan thereof.

(c) The Lender shall pay all costs and expenses, including, without limitation, reasonable attorney fees and expenses incurred by the MSF in enforcing any obligation of the Lender arising from or under this Agreement.

(d) The MSF also reserves the right to require the Lender's books and records related in any way to any Credit Facility Documents, any End Loan, any Enrolled Loan, or any Authorized Claim, 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

that a breach of this Agreement has occurred, the Lender shall reimburse the MSF for the fees and expenses incurred to perform the audit.

(e) Notwithstanding anything to the contrary, in the event any Enrolled Loan or Authorized Claim is later determined not to be eligible under the SSBCI-MLGP, or other State or federal laws, for any reason, including without limitation, pursuant to any rules, guidelines and regulations, orders or directives promulgated thereunder, they shall automatically be deemed ineligible and dis-enrolled from the SSBCI-MLGP, and the Project Manager shall provide written notice to Lender of such events. Further, to the extent the MSF, or any other authority requires recoupment or other payment of any monies paid by the MSF to Lender that arose from an ineligible or otherwise improper Enrolled Loan or ineligible or otherwise improper Authorized Claim or payment thereon, Lender shall forthwith reimburse the MSF all amounts paid by the MSF thereon.

Section 11. Subrogation. If as a result of any payment under the MSF Guarantee Obligation, or when such payment is combined with any other recovery, Lender has fully covered an Authorized Claim, the MSF, upon its written request to Lender, shall be subrogated to all right, title and interest with respect to any Collateral, security or other right of recovery, in connection with the Enrolled Loan, which has not yet been realized, and the Lender shall take all steps to effectuate the request for subrogation by the MSF. In the event of any exercise of subrogation rights by the MSF, the MSF shall not be required to undertake any other parties' obligations under any documents in connection with the subrogated rights, except for any obligations directly related to the exercise by the MSF of its subrogated right of recovery thereunder. This section shall survive indefinitely.

Section 12. Notice. Other than submissions and communication to the Project Manager as required herein, any notice or other communication under this Loan Guarantee 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:

LENDER
ADDRESS
ADDRESS

Attention: XXXXXXXX

Email: XXXX@XXX.com

If to the MSF:

Michigan Strategic Fund
c/o Michigan Economic Development Corporation
Capital Access Team
300 North Washington Square

Attention: XXXXXXXX

Email: XXXX@michigan.org

Section 13. Severability. All the clauses of this Agreement are distinct and severable and, if any clause shall be deemed illegal, void, or unenforceable, it shall not affect the validity, legality, or enforceability of any other clause or provision of this Agreement. To the extent possible, the illegal, void, or unenforceable provision shall be revised to the extent required to render the Agreement enforceable and valid, and to the fullest extent possible, the rights and responsibilities of the Parties shall be interpreted and enforced to preserve the Agreement and the intent of the Parties. Provided, if application of this section should materially and adversely alter or affect a

Party's rights or obligations under this Agreement, the Parties agree to negotiate in good faith to develop a structure that is as nearly the same structure as the original Agreement (as may be amended from time to time) without regard to such invalidity, illegality, or unenforceability.

Section 14. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

Section 15. Relationship of Parties. The Lender and its affiliates, officers, directors, agents, members, managers, and employees shall not describe or represent themselves as agents of the State, the MSF, or the MEDC to any person, firm, or entity for any purpose.

Section 16. 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 assign, or otherwise transfer its rights, duties, or obligations in this Agreement without the express prior written approval of the Lender. The Lender may not pledge, sub-participate, assign, or otherwise transfer any interest in any Credit Facility Documents, or any Enrolled Loans or its respective rights, duties, or obligations under this Agreement without the express prior written approval of the MSF Fund Manager. The terms and conditions of this Agreement shall bind the permitted successors and permitted assigns of the Parties.

Section 17. Waiver. A failure or delay in exercising any right under this Agreement will not be presumed to operate as a waiver unless otherwise stated in this Agreement, and a single or partial exercise of any right will not be presumed to preclude any subsequent or further exercise of that right or the exercise of any other right.

Section 18. Amendment. This Agreement may not be modified or amended without the express prior written approval of the MSF Fund Manager and the Lender and any amendment to this Agreement shall be pursuant to a written agreement signed by the Parties. Provided however, the Project Manager may amend the format and appearance of the Loan Enrollment Form and Authorized Claim Form from time to time for more efficient or convenient use as determined by the Project Manager, including for the purpose of promoting fillable electronic forms, or adding additional information, and in such case, the Project Manager shall provide Lender written notice and copies thereof.

Section 19. Entire Agreement. This Agreement, together with the Exhibits, and applicable schedules thereto, sets forth the entire agreement of the Parties with respect to this Agreement, and supersedes all prior agreements, understandings, and communications, whether written or oral, with respect to this particular Agreement.

Section 20. Governing Law. This Agreement is a contract made under the laws of the State, and for all purposes shall be governed by, and construed in accordance with, the laws of the State.

Section 21. Termination. Except as to the above Sections 1, 5(g), 6(c), and 10 through 21, and Sections 1, 3 and 4 of Exhibit A, all of which shall survive indefinitely, and except as to other terms and conditions which shall survive as provided in this Agreement, this Agreement shall terminate at the end of the Term.

Section 22. Counterparts; Facsimile/Pdf Signatures. This Agreement may be signed in counterparts and delivered by facsimile or in pdf form, and in any such circumstances, shall be considered one document and an original for all purposes.

Section 23. Publicity. At the request and expense of the MSF or the MEDC, the Lender will cooperate with the MSF or the MEDC to promote the MSF, the MEDC and/or the SSBCI-MLGP through one or more of the placement of a sign, plaque, media coverage or other public presentation at other locations acceptable to the Parties.

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The undersigned signing on behalf of Lender and the MSF, respectively, represent and warrant that they each have the requisite authority and power to sign below on behalf of their respective Party.

LENDER

NAME
TITLE

MICHIGAN STRATEGIC FUND

Valerie Hoag
Fund Manager

(Signature page to Loan Guarantee Agreement)

DRAFT

EXHIBIT A

DEFINITIONS

1. “**Act**” means the Michigan Strategic Fund Act, MCL 125.2001 et. seq. as amended.
2. “**Agreement**” has the meaning set forth in the preamble of this Agreement.
3. “**Auditor General**” means the auditor general of the State of Michigan.
4. “**Authorized Claim**” means a claim for payment on the MSF Guarantee Obligation by the Lender to the MSF, which arises from a Delinquent Enrolled Loan, and is approved in writing by the Project Manager as an Authorized Claim.
5. “**Authorized Claim Form**” is that form in the form attached as Exhibit E of this Agreement.
6. “**Borrower**” means the recipient(s) of a Lender’s advance under the End Loans.
7. “**Borrower Acknowledgment and Borrower’s Assurances**” means those provisions set forth in Exhibit C-1 of this Agreement.
8. “**Borrower’s Indebtedness**” means all principal which may or shall become due and payable to Lender by Borrower pursuant to the provisions of the End Loan Documents, but only to the extent such indebtedness arises out of an Authorized Claim hereunder. For the avoidance of doubt, for purposes of this Agreement, in no event shall any portion of the Borrower’s Indebtedness include any interest, fees, costs, expenses, recapitalization or restatement of the foregoing, or sums of any nature other than the original principal amount of the End Loan disbursed to the Borrower.
9. “**CCO**” means the principal executive officer of the Office of Chief Compliance Officer created by the Act.
10. “**Collateral**” means all property, including real, personal, tangible, intangible, or otherwise, security, or other right of recovery, pledged by the Borrower under its End Loan to secure payment or performance to Lender of the Borrower’s obligations under the End Loan.
11. “**Credit Facilities**” has the meaning set forth in Section 2(a) of this Agreement.
12. “**Credit Facility Documents**” has the meaning set forth in Section 2(a) of this Agreement.
13. “**Default**” means an event which with the giving of notice or the passage of time, or both, would be reasonably likely to constitute an Event of Default.
14. “**Delinquent Enrolled Loan**” means an Enrolled Loan with respect to which one or more payments of any principal due the Lender are greater than one hundred twenty (120) calendar days past due.
15. “**Effective Date**” has the meaning set forth in the preamble of this Agreement.
16. “**End Loan**” means direct loan advance(s) by Lender from the proceeds of the Credit Facilities to a Borrower as permitted by the Credit Facilities, the applicable Credit Facility Documents and this Agreement.

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17. “**End Loan Documents**” has the meaning set forth in Section 2(c) of this Agreement.
18. “**Enrolled Loan**” means an End Loan which is permitted under the Credit Facilities, the applicable Credit Facility Documents, complies the SSBCI-MLGP and this Agreement, including the Lender Assurances set forth in Exhibit B, the Borrower Acknowledgment and Borrower Assurances set forth in Exhibit C-1, and the additional required terms set forth on the additional applicable Exhibits and schedules made a part of the foregoing, and is approved in writing by the Project Manager as an Enrolled Loan.
19. “**Event of Default**” means one or more of those events described in Section 9 of this Agreement.
20. “**Exhibit**” means each of the documents attached to this Agreement.
21. “**Indemnified Persons**” has the meaning set forth in Section 5 of Exhibit B of this Agreement.
22. “**Legal Action**” has the meaning set forth in Section 6(b)ii(2).
23. “**Lender**” has the meaning set forth in the preamble of this Agreement.
24. “**Loan Enrollment Form**” has the meaning set forth in Section 7(a) of this Agreement in the form attached to this Agreement including all required Exhibits and schedules made a part of thereof, as applicable.
25. “**Loan Enrollment Request Date**” has the meaning set forth in Exhibit C of this Agreement.
26. “**Loan Guarantee Agreement**” means this Agreement.
27. “**MBGF**” has the meaning set forth in Recital B of this Agreement.
28. “**MEDC**” has the meaning set forth in Recital D of this Agreement.
29. “**MSF**” has the meaning set forth in the preamble of this Agreement.
30. “**MSF Fund Manager**” means the person designated by the Board of Directors of the MSF from time to time to serve as fund manager for the MSF programs.
31. “**MSF Guarantee Cap**” has the meaning set forth in Section 6(b) of this Agreement.
32. “**MSF Guarantee Obligation**” has the meaning set forth in Section 6(a) of this Agreement.
33. “**Part I Claim Request**” has the meaning set forth in Section 8(b) of this Agreement.
34. “**Part I Claim Request Date**” has the meaning set forth in Exhibit E of this Agreement.
35. “**Part II Claim Request**” has the meaning set forth in Section 8(d) of this Agreement.
36. “**Part II Claim Request Date**” has the meaning set forth in Exhibit E of this Agreement.
37. “**Party**”, and “**Parties**”, has the meaning set forth in the preamble of this Agreement.

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38. “**Project Manager**” means that individual person designated by the MSF Fund Manager or the MEDC from time to time to provide administrative services for the MSF under this Agreement, and as more particularly described in Section 2(d) of this Agreement.
39. “**SSBCI**” has the meaning set forth in Recital B of this Agreement.
40. “**SSBCI-MLGP**” has the meaning set forth in Recital D of this Agreement.
41. “**State**” means the State of Michigan.
42. “**Term**” means from the Effective Date, and unless earlier terminated as provided by this Agreement, this Agreement shall terminate on the first to occur of: (i) one (1) year from the Effective Date in the event at least one End Loan has not become an Enrolled Loan under this Agreement, (ii) when the full amount of the MSF Guarantee Obligation under this Agreement (as limited by the MSF Guarantee Cap) has been paid in full by the MSF (ii) when the Parties agree in writing, or (iii) no later than the date the last of the Enrolled Loans is paid in full to the Lender, otherwise terminated or withdrawn as an Enrolled Loan by Lender as permitted hereunder, or has otherwise been dis-enrolled as an Enrolled Loan as permitted hereunder.

EXHIBIT B

LENDER ASSURANCES

A. STATE OF MICHIGAN REQUIREMENTS

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

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

This Section shall survive for a period of three years from date of termination of the 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 Credit Facilities, any End Loan or End Loan Documents, any Enrolled Loan, or this 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 Credit Facilities, Credit Facility Documents, any End Loan or End Loan Documents, any Enrolled Loan, or this 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 Credit Facilities, Credit Facility Documents, any End Loan or End Loan Documents, any Enrolled Loan, or this 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

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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 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 this Agreement indefinitely.

4. **Jurisdiction**. The Lender agrees that it shall make a good faith effort to resolve any controversies that arise regarding this Agreement. If a controversy cannot be resolved, the Lender agree that any legal actions concerning this 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 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.

6. **Other Prohibited Purposes of End Loan**. Lender shall not extend an End Loan for the purpose of 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)).

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 Credit Facilities, the Credit Facility Documents, any End Loan or End Loan Documents, any Enrolled Loan, and this Agreement, subject to the Right to Financial Privacy Act, 12 U.S.C § 3401, et. seq.), including detailed 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. No End Loan shall be extended to support any Borrower that has more than 750 employees.

7. Loan Purpose and Other Standards:

(a) No End Loan will be made in order to place under the protection of the approved SSBCI-MLGP prior debt that is not covered under the approved SSBCI-MLGP and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender;

(b) Each End Loan shall be a new extension of credit to the Borrower by the Lender:

i) and, if such End Loan is to refinance the Borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender, the proceeds of the End Loan shall not be used to finance an extraordinary dividend or other distribution, or

ii) if any End 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 such End 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) such End Loan shall be 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

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(4) the proceeds of the End Loan shall not be used to finance an extraordinary dividend or other distribution.

(c) Each End Loan shall not exceed the principal amount of \$20 million;

(d) The interest rate for each End 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 End 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 3 percent for loans greater than \$25,000 or \$750 for loans equal to or less than \$25,000.

(f) The End 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 End 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

8. SBA loan. The Lender shall not attempt to enroll in the SSBCI-MLGP any portion of an SBA guaranteed loan without obtaining the MSF's express prior written consent.

9. Borrower Acknowledgement and Assurances, SEDI, and Demographic Data. As part of the Lender's process to pursue enrollment of an End Loan to an Enrolled Loan, the Lender shall comply with this Agreement, including as part of the completion and submission of a Loan Enrollment Form, the Lender shall:

(a) require the Borrower to complete and sign the Borrower's Acknowledgment and the Borrower Assurances (see Exhibit C-1); and

(b) require the Borrower to complete and sign the Borrower Certification Related to Business Enterprises Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses) (see Schedule C-2); and

(c) provide the Borrower and its principal owners, the opportunity to complete and sign the Borrower and Its Principal Owners' Demographic-Related Data, (see Schedule C-3); and

(d) as applicable to a permitted passive real estate transaction, require the operating company to complete and sign the Operating Company Certification Related to Business Enterprises Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses) (see Schedule D-1); and

(e) as applicable to a permitted passive real estate transaction, provide the operating company and its principal owners the opportunity to complete and sign the Operating Company and Its Principal Owners' Demographic-Related Data, (see Schedule D-2).

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Lender shall submit to the Project Manager the fully completed and signed as required Loan Enrollment Form, together with all applicable Exhibits and schedules thereto required by this Agreement.

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 Agreement with the following information for each such End 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 End 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 End 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 End Loan;
- (l) the amount of additional private financing occurring for or on behalf of the Borrower after the closing of the End Loan Documents; and
- (m) any other information from time to time requested by the MSF.

EXHIBIT C

With respect to each and every End Loan that the Lender seeks to become an Enrolled Loan under this Agreement, the Lender shall return a fully finalized and executed form of its portion of this Exhibit:

SSBCI 2.0 LOAN GUARANTEE PROGRAM
LOAN ENROLLMENT FORM

This Loan Enrollment Form is furnished by LENDER, ("Lender"), to the Michigan Strategic Fund ("MSF") in connection with that certain loan from Lender to (LENDER: INSERT BORROWER LEGAL NAME) ("Borrower"), dated _____, and that certain SSBCI 2.0 Loan Guarantee Agreement originally dated MONTH XX, 20XX, CASE-XXXXXX, between the MSF and the Lender, as amended, restated, modified, substituted, and extended from time to time ("Loan Guarantee Agreement").

All capitalized terms used herein, and not otherwise defined herein, shall have the meanings set forth in the Loan Guarantee Agreement.
As of the Loan Enrollment Request Date, Lender submits the following:

A. CONTACT INFORMATION

1. Lender Contact Information:

Name of Lender: _____
Lender Employer Identification Number: _____
Lender's Regulatory Identification Number: _____
Street Address: _____
City, State, And Zip: _____
Contact Name: _____
Phone: _____
E-Mail: _____

2) Borrower (End Loan) - Information:

Name: _____
Principal Street Address: _____
City, State, And Zip Code: _____
County: _____
Contact Name: _____
Phone: _____
E-Mail: _____

Borrower Employer Identification Number _____
NAICS Code: _____
Year Borrower Incorporated or Organized: _____

Business Annual Revenue
(in last FY) _____
Business Net Income
(in last FY) _____

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Full Time Equivalent Employees (FTE's) of Business _____

Estimate of FTE's of Business to be created as a result of the End Loan _____

Amount of End Loan _____
 Of the End Loan Amount, the amount that is from non-private sources: _____

Date of End Loan: _____
 Date of initial disbursement (or projected date): _____

Loan Term: _____

Loan APR: _____ (Fixed or Adjustable)

Maximum Interest Rate: _____

Total Origination Charges: _____

Use of proceeds of End Loan: _____

Is this End Loan an increase to a prior Business End Loan: _____

If yes, list the balance of the prior End Loan before the advance of this End Loan: _____

COLLATERAL GRANTED TO SECURE REPAYMENT OF END LOAN	
---	--

Describe the Collateral, and the Lender's underwriting value for each used for the End Loan, which was given to secure payment of the End Loan (use additional sheets as necessary):

Description of Collateral	Underwriting Value

Total Underwriting Value:	

GUARANTEES SECURING REPAYMENT OF END LOAN	
List the name of each guarantor, the amount each Guarantee, and any additional information relevant to each guarantee, which was given to secure payment of the End Loan (use additional sheets as necessary), <u>and attach a copy of each guarantee:</u>	
Name of Guarantor	Amount Guaranteed/Additional Information

B. REPRESENTATIONS AND WARRANTIES

1. As of the Loan Enrollment Request Date, the Lender represents and warrants to the MSF:
 - a. Except as permitted under the Loan Guarantee Agreement, there have been no modifications, extensions, amendments, or adjustments made by Lender with respect to any Enrolled Loans.
 - b. The Lender’s representations, warranties, and covenants under any of the Credit Facilities or applicable Credit Facility Documents, the End Loan Documents, and the Loan Guarantee Agreement are and remain true and correct in all material respects.
 - c. The Lender is in material compliance with all obligations and duties required of it under any of the Credit Facilities or applicable Credit Facility Documents, all End Loan Documents, and the Loan Guarantee Agreement.
 - d. The Borrower is in material compliance with all obligations and duties required of it under its End Loan Documents.
 - e. Passive Real Estate: **LENDER MUST CHECK THE APPLICABLE BOX BELOW:**

the Borrower is NOT a real estate holding company using the proceeds of the End Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company, **OR**

The Borrower IS a real estate holding company using the proceeds of the End Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company. To the extent Borrower is a real estate holding company using the proceeds of the End Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company. The operating company is [**LENDER: INSERT THE OPERATING COMPANY'S LEGAL NAME**]_____ (“Operating Company”). The Lender further represents and warrants the following:

- i. The Operating Company is a co-borrower or a guarantor of the End Loan, as applicable;
 - ii. Both the Borrower and Operating Company have executed all required certifications, including those included within all required Exhibits and schedules made a part of the Loan Enrollment Form;
 - iii. Each natural person holding an ownership interest constituting at least twenty percent (20%) of the Borrower and the Operating Company have provided a personal guaranty in favor of the Lender for the Loan; and
 - iv. Borrower and Operating Company have a written lease with a term at least equal to the term of the End Loan, including options to renew exercisable solely by the Operating Company.
- f. Assurances. Attached is Borrower Acknowledgment and Assurances (see Exhibit C-1), and if applicable, the Operating Company Certification (see Exhibit D).
- g. Sedi Requirements. Attached is the Borrower Certification Related to Business Enterprises Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses) (see Schedule C-2); and if applicable, attached is the Operating Company's Certification Related to Business Enterprises Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses) (see Schedule D-1).
- g. Demographic-Related Data. Attached, if chosen to be provided, is the Borrower and its principal owners completed Borrower and Its Principal Owners' Demographic-Related Data, (see Schedule C-3); and attached, if applicable, and if chosen to be provided, is the Operating Company and its principal owners completed Operating Company and Its Principal Owners' Demographic-Related Data, (see Schedule D-2).

Lender certifies that the above information is true and correct to the best of its knowledge, and it submits this Loan Enrollment Form to the Project Manager as required by the Loan Guarantee Agreement.

Lender requests that the End Loan of \$_____ be deemed an Enrolled Loan under the Loan Guarantee Agreement.

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Signed effective _____, _____ (“Loan Enrollment Request Date”).

LENDER

By:
Its:

FOR PROJECT MANAGER USE ONLY:

Review of Part I Claim Request:

Amount of this End Loan: \$ _____

Total Amount of all Enrolled Loans: \$ _____

Total Gross Amount of MSF Guarantee Obligation*:
(*as limited by the MSF Guarantee Cap) \$ _____

Less all previously paid Authorized Claims
on all Enrolled Loans: \$ _____

Plus reimbursements to MSF Guarantee Obligation: \$ _____

Remaining MSF Guarantee Obligation*:
(*as limited by the MSF Guarantee Cap) \$ _____

MSF Reserve Amount for this Enrolled Loan: \$ _____

Pursuant to the Loan Guarantee Agreement:

_____ The request that above End Loan become for an Enrolled Loan is approved
and the Enrolled Loan amount is \$ _____

[OR]

_____ The request that the above End Loan become an Enrolled Loan is rejected.

Name:
Project Manager
Dated: _____

WITHDRAWAL OF ENROLLED LOAN BY LENDER:

Lender hereby notifies the Project Manager that the above End Loan in the original principal amount

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of \$ _____ is withdrawn as an Enrolled Loan, and that either: (i) the MSF has not made any payment on the MSF Guarantee Obligation arising out of the above End Loan, or (ii) the above End Loan is paid in full and the MSF has been reimbursed for any payments made on the MSF Guarantee Obligation arising out of the End Loan.

LENDER

By: _____

Name: _____

Its: _____

Dated: _____

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SCHEDULE C-1

With respect to each and every End Loan that the Lender seeks to become an Enrolled Loan under this Agreement, the Lender shall secure the Borrower Acknowledgment and Assurances set forth below and return to the MSF a fully finalized and executed form of this Exhibit:

SSBCI 2.0 LOAN GUARANTEE PROGRAM BORROWER ACKNOWLEDGMENT AND BORROWER ASSURANCES

This Borrower Acknowledgment and Borrower Assurances form is provided in connection with that certain End Loan from **LENDER** ("Lender"), to **[LENDER INSERT BORROWER LEGAL NAME]** ("Borrower"), dated _____, and in connection with pursuing enrollment of such End Loan in the SSBCI 2.0 Loan Guarantee Program ("SSBCI-MLGP") operated by the Michigan Strategic Fund (the "MSF") and as further required by the Loan Guarantee Agreement between Lender and the MSF, originally dated **MONTH XX, 20XX**, CASE-**XXXXXX**, as amended, restated, modified, substituted, and extended from time to time ("Loan Guarantee Agreement").

All capitalized terms that are not otherwise defined herein shall have the meanings set forth in the Loan Guarantee Agreement. For the benefit of the MSF and the Lender, the Borrower represents and warrants to the Lender and the MSF:

A. 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 applicable to Borrower as set forth in the Loan Guarantee Agreement and acknowledges, consents to, and affirms all the terms and conditions therein.

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 End Loan or the End Loan Documents to the U.S. Department of the Treasury, the MEDC and/or the MSF or their successors, and as otherwise set forth in the Loan Guarantee Agreement.

Borrower shall take all action necessary to cause the terms and conditions in the End Loan Documents, and the Loan Guarantee Agreement as applicable to Borrower, to be satisfied in all respects.

Borrower must complete Schedule C-2. Borrower may also complete, and request its principal owners to complete, Schedule C-3 and if completed, Borrower shall submit each of the Borrower's and the principal owners completed portions of Schedule C-3 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 C-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.

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 this Exhibit C and its Schedules, as applicable (except for the demographic information requested in Schedule C-3) may result in the denial of the Loan. Providing the demographic information in Schedule C-3 is optional. If you decline to provide this information, it will not adversely affect the Loan.***

B. BORROWER ASSURANCES

STATE OF MICHIGAN REQUIREMENTS

- 1. Michigan Operations.** So long as any portion of the End Loan is outstanding, 100% of any assets being financed by the End Loan shall be located in Michigan and with respect to the business being financed, the Borrower shall maintain substantially all of its employees (exclusive of sales staff) or operations 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.

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, as applicable and as defined below) 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 the Operating Company.
2. **Business Purpose.** The End 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 End Loan proceeds will not be used:
 - (a) for any impermissible purpose under the SSBCI or the SSBCI-MLGP;
 - (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:

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- (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 business¹⁹; “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 required by SSBCI to the Lender and any other information required from time to time by the MSF related to the Loan Guarantee 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 End Loan and the use of the End Loan, subject to the Right to Financial Privacy Act, 12 U.S.C § 3401, et. seq.), including detailed Loan records. In accordance with SSBCI guidelines, this Section shall survive until [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 the End Loan or End Loan Documents 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 Borrower 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".

9. **Passive Real Estate: BORROWER MUST CHECK THE APPLICABLE BOX BELOW:**

the Borrower is NOT a real estate holding company using the proceeds of the End Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company, **OR**

The Borrower IS a real estate holding company using the proceeds of the End Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company. To the extent Borrower is a real estate holding company using the proceeds of the End Loan to acquire and hold real or personal property and subsequently leasing the real or personal property to a related operating company. The operating company is [**LENDER: INSERT THE OPERATING COMPANY'S LEGAL NAME**] ("Operating Company"). The Borrower further represents and warrants the following:

- i. The Operating Company is a co-borrower or a guarantor of the End Loan, as applicable;
- ii. Both the Borrower and Operating Company have executed all required certifications, including those included within all required Exhibits and schedules made a part of the Loan Enrollment Form;
- iii. Each natural person holding an ownership interest constituting at least twenty percent (20%) of the Borrower and the Operating Company have provided a personal guaranty in favor of the Lender for the Loan; and
- iv. Borrower and Operating Company have a written lease with a term at least equal to the term of the End Loan, including options to renew exercisable solely by the Operating Company.

10. **Sedi Requirements.** Attached is Borrower Certification Related to Business Enterprises Owned

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and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses) (see Schedule C-2); and

11. Demographic-Related Data. Attached, if chosen to be provided, is the Borrower and its principal owners completed Borrower and Its Principal Owners' Demographic-Related Data, (see Schedule C-3).

The undersigned is an authorized representative of the Borrower.

BORROWER: _____

By: _____
Its: _____
Date: _____

(BORROWER SIGNATURE PAGE TO LOAN ENROLLMENT FORM
MADE PART OF THE LOAN GUARANTEE AGREEMENT)

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SCHEDULE C-2

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)¹. 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 group (1) (A) OR (1) (B) below that applies, including all subcategories in group (1) that apply. The Borrower shall also complete Section 2 and 3 below that apply.

The Borrower hereby certifies to the MSF and the Lender that:

- (1) (A) Borrower **IS** a Business enterprise that is owned and controlled² 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;
 - 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

¹ 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).

² 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.

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membership of another underserved community.³

OR

(B) Borrower is **NOT** a Business enterprise that is owned and controlled⁴ by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, it is a Business enterprise that is owned and controlled⁵ by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to any of the categories listed above.

(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 Borrower.

BORROWER: _____

By: _____
Its: _____
Date: _____

(BORROWER SIGNATURE PAGE TO SEDI REQUIREMENTS-SCHEDULE C-2)

³ “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.

⁴ 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.

⁵ 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.

SCHEDULE C-3**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. 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

BORROWER: _____

By: _____

Its: _____

Date: _____

(BORROWER SIGNATURE PAGE TO DEMOGRAPHIC-RELATED DATA-SCHEDULE C-3)

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 C-3)

EXHIBIT D

OPERATING COMPANY CERTIFICATION

[LENDER: YOU MUST ADD THIS COMPLETED EXHIBIT D
FOR HOLDING COMPANY SITUATIONS]

In connection with that certain End Loan from **LENDER** (the "Lender") to **[LENDER: INSERT BORROWER LEGAL NAME]** _____ (the "Borrower"), dated _____ (the "Loan"), and in furtherance of the State Small Business Credit Initiative (the "SSBCI"), Michigan Loan Guarantee Program (the "SSBCI-MLGP") operated by the Michigan Strategic Fund (the "MSF"), and in connection with that certain SSBCI 2.0 Loan Guarantee Agreement originally dated **MONTH XX, 20XX**, CASE-**XXXXXX**, for the benefit of the Lender and the Borrower and in accordance with the SSBCI-MLGP, **[LENDER: INSERT OPERATING COMPANY LEGAL NAME]** _____ ("Operating Company") represents and warrants to the Lender and the MSF:

1. **Business Purpose.** The End 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 End Loan proceeds will not be used:

- (a) for any impermissible purpose under the SSBCI or the SSBCI-MLPP;
- (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) The Operating Company is not:

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- 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) The Operating Company is an affiliate of the Borrower, and together with Borrower’s employees, does not have an aggregate of more than 750 employees.

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

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

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

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

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

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

5. **No Conviction of Sex Offense.** No principal of the Operating Company has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, “principal” is defined as “if a sole proprietorship, the proprietor; if a partnership, each 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”.

6. **Sedi Requirements.** Attached is the Operating Company’s Certification Related to Business Enterprises Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses) (see Schedule D-1).

7. **Demographic-Related Data.** Attached, if chosen to be provided, is the Operating

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Company and its principal owners completed Operating Company and Its Principal Owners' Demographic-Related Data, (see Schedule D-2).

The undersigned is an authorized representative of the Operating Company.

OPERATING COMPANY: _____

By: _____

Its: _____

Date: _____

(OPERATING COMPANY SIGNATURE PAGE TO EXHIBIT D)

DRAFT

SCHEDULE D-1

Operating Company 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)⁶. 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 is required to provide this certification. The Operating Company shall identify all categories in group (1) (A) OR (1) (B) below that applies, including all subcategories in group (1) that apply. The Operating Company shall also complete Section 2 and 3 below that apply.

The **[LENDER: INSERT OPERATING COMPANY LEGAL NAME]** _____
("Operating Company") hereby certifies to the MSF and the Lender that:

(1) (A) the Operating Company **IS** a Business enterprise that is owned and controlled⁷ 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;
- limited English proficiency;
- disability;
- membership of a federally or state-recognized Indian Tribe;

⁶ 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).

⁷ 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.

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- long-term residence in a rural community;
- residence in a U.S. territory; or
- membership of another underserved community.⁸

OR

(B) The Operating Company is **NOT** a Business enterprise that is owned and controlled⁹ by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, it is a Business enterprise that is owned and controlled¹⁰ by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to any of the categories listed above.

The undersigned is an authorized representative of the Operating Company.

OPERATING COMPANY: _____

By: _____
Its: _____
Date: _____

(OPERATING COMPANY SIGNATURE PAGE TO SEDI REQUIREMENTS-SCHEDULE D-1)

⁸ “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.

⁹ 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.

¹⁰ 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.

SCHEDULE D-2

OPERATING COMPANY 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. 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 [LENDER: INSERT THE OPERATING COMPANY LEGAL NAME] _____ ("Operating Company") data, and Section B below is for collection of data for each principal owner of the Operating Company.

A. Operating Company Data. The Operating Company 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 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 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 a veteran-owned or controlled business?

- Yes No Prefer not to respond

OPERATING COMPANY: _____

By: _____
Its: _____
Date: _____

(OPERATING COMPANY SIGNATURE PAGE TO
DEMOGRAPHIC-RELATED DATA-SCHEDULE D-2)

B. Principal Owner Data. Each principal owner of the Operating Company 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, 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 (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

Signature

Printed Name of Principal Owner

Date: _____

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

EXHIBIT E

With respect to each and every Enrolled Loan for which the Lender seeks a payment under the MSF Guarantee Obligation, the Lender shall return a fully finalized and executed form of its portion of this Exhibit:

SSBCI 2.0 LOAN GUARANTEE PROGRAM
AUTHORIZED CLAIM FORM

This Authorized Claim Form is furnished by LENDER ("Lender"), to the Michigan Strategic Fund, ("MSF") in connection that certain End Loan from Lender to [LENDER: INSERT BORROWER LEGAL NAME] ("Borrower"), dated _____, and enrollment of such End Loan in the Michigan Loan Guarantee Program ("SSBCI-MLGP") operated by the MSF and required by the Loan Guarantee Agreement between Lender and the MSF, originally dated MONTH XXXX, 20XX, CASE-XXXXXXX, as amended, restated, modified, substituted, and extended from time to time ("Loan Guarantee Agreement").

All capitalized terms used herein, and not otherwise defined herein, shall have the meanings set forth in the Loan Guarantee Agreement.

PART I CLAIM REQUEST FOR AUTHORIZED CLAIM AND PAYMENT OF 10% OF AUTHORIZED CLAIM

As of the Part I Claim Request Date, Lender submits the following:

A. CONTACT INFORMATION

Lender Contact Information:

Name of Lender: _____
Lender Employer Identification Number: _____
Lender Regulatory Identification Number: _____
Street Address: _____
City, State, And Zip: _____
Contact Name: _____
Title: _____
Phone: _____
Fax: _____
E-Mail: _____

Delinquent Enrolled Loan - Borrower Contact Information:

Name: _____
Street Address: _____
City, State, And Zip Code: _____
Contact Name: _____
Title: _____
Phone: _____
Fax: _____
E-Mail: _____

B. CLAIM INFORMATION

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Lender submits the following information with respect to the Delinquent Enrolled Loan which is the basis of this request for an Authorized Claim and payment thereon:

DELINQUENT ENROLLED LOAN INFORMATION (AS OF THE PART I CLAIM REQUEST DATE)	
Original Principal Amount of Enrolled Loan:	1.
Date Loan became an Enrolled Loan under the SSBCI-MLGP:	2
Date of last payment on Delinquent Enrolled Loan:	3.
Date Loan became a Delinquent Enrolled Loan:	4.
Date Lender accelerated the Delinquent Enrolled Loan:	5.
Total outstanding principal balance of Delinquent Enrolled Loan:	6.
10% of amount of outstanding principal balance of Delinquent Enrolled Loan (10% of Box 6):	7.
COLLATERAL SECURING REPAYMENT OF DELINQUENT ENROLLED LOAN	
Describe the Collateral, and the estimated gross liquidation of each as of the Part I Claim Request Date, which secures payment of the Delinquent Enrolled Loan (use additional sheets as necessary). In addition, describe the disposition and use of proceeds of any Collateral not listed below which was as listed on the Loan Enrollment Form:	
Description of Collateral	Estimated Gross Liquidation (prior to costs of liquidation)
Total Estimated Gross Liquidation Value	

Description of all Collateral not shown above which was listed on the Loan Enrollment Form, including a detailed explanation of the disposition of, and use of any proceeds realized therefrom:	
GUARANTEES SECURING REPAYMENT OF DELINQUENT ENROLLED LOAN	
List the name of each guarantor, the amount of each guarantee, and any additional information relevant to each guarantee, which was given to secure payment of the Delinquent Enrolled Loan (use additional sheets as necessary):	
Name of Guarantor	Amount Guaranteed/Additional Information
TOTAL AMOUNT OF GUARANTEES:	
LEGAL ACTION PLAN FOR RECOVERY FOR REPAYMENT OF DELINQUENT END LOAN	
Provide a narrative detailed summary on the Legal Action plan to recover repayment of the Delinquent Enrolled Loan, including the plans for liquidation of each item of Collateral given to secure the repayment of the Delinquent Enrolled Loan and the plan to recover payment from any guarantors, in each case as of the Part I Claim Request Date. If there are no plans to pursue any portion of the Collateral, or any guarantor, the summary shall include the justification for each such decision.	

C. REPRESENTATIONS AND WARRANTIES OF LENDER:

As of the Part I Claim Request Date, the Lender represents and warrants to the MSF:

MEDC Legal

(a) Except as permitted under the Loan Guarantee Agreement, there have been no modifications, extensions, amendments, or adjustments made by Lender with respect to any of the Enrolled Loans.

(b) The Lender's representations, warranties, and covenants in the under any of the Credit Facilities or applicable Credit Facility Documents, all End Loan Documents and the Loan Guarantee Agreement, are and remain true and correct in all material respects.

(c) The Lender is in material compliance with all of its obligations and duties required of it under any of the Credit Facilities or applicable Credit Facility Documents, all End Loan Documents, and under the Loan Guarantee Agreement.

(d) The Loan noted herein is a Delinquent Enrolled Loan.

Lender certifies that the above information is true and correct to the best of its knowledge, and it submits this Part I Claim Request of the Authorized Claim Form to the Project Manager as required by the Loan Guarantee Agreement. Lender requests that the amount of the Delinquent Enrolled Loan \$_____ (Box 6) be deemed an Authorized Claim and further requests disbursement to the Lender under the MSF Guarantee Obligation of \$_____ (10% of the Authorized Claim (Box 7)).

Signed effective _____, _____ ("Part I Claim Request Date").

LENDER

By: _____

Name: _____

Its: _____

FOR PROJECT MANAGER USE ONLY:

Part I Claim Request Review:

Total amount of all Enrolled Loans:	8.	\$ _____
Total gross amount of MSF Guarantee Obligation: (as limited by the MSF Guarantee Cap)	9.	\$ _____
Less all amounts previously paid on Authorized Claims for other Enrolled Loans:	10.	\$ _____
Plus reimbursements to MSF Guarantee Obligation:	11.	\$ _____
Remaining MSF Guarantee Obligation*: (*as limited by the MSF Guarantee Cap)	12.	\$ _____
Total Part I Claim Request for Authorized Claim on this Delinquent Enrolled Loan:	13.	\$ _____

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10% of Authorized Claim (10% of Box 13)
(as limited by the MSF Guarantee Cap)

14. \$ _____

Pursuant to the Loan Guarantee Agreement:

_____ The Part I Claim Request for an Authorized Claim is approved, and the amount of \$ _____ (10% payment (Box 14)) is approved to proceed for disbursement to Lender.

[Or]

_____ The Part I Claim Request for an Authorized Claim is rejected.

Name:
Project Manager

Dated: _____

**PART II CLAIM REQUEST
FOR PAYMENT OF REMAINING GUARANTEED PORTION OF NET AUTHORIZED CLAIM**

1. Lender submits the following wrap-up report on the actual results of implementation of the Legal Action plan for recovery for repayment of Delinquent Enrolled Loan which was set forth in the Part I Claim Request:

ACTUAL RESULTS OF THE PLAN FOR RECOVERY OF REPAYMENT OF DELINQUENT ENROLLED LOAN	
Provide a narrative detailed summary on the actual results of the Legal Action plan for recovery for repayment of Delinquent Enrolled Loan, including itemized detail of the results of the liquidation efforts as to each item of Collateral to secure the repayment of the Delinquent Enrolled Loan, and itemized detail of the result of collection efforts to recover payment from any guarantors, in each case as of the Part II Claim Request Date. In each case in which there was no recovery, the summary shall include the full explanation of the collection efforts and the justification for each such result.	

2. As of the Part II Claim Request Date, the Lender represents and warrants to the MSF:

Total Authorized Claim under the Part I Claim Request: (Box 13)	15.
Less the 10% approved by Project Manager: (Box 14):	16.

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Less net amount recovered on liquidation of Collateral securing the Delinquent Enrolled Loan (after deducting normal and customary costs of liquidation)	17.
Less any other principal payments received Delinquent Enrolled Loan	18.
Total Remaining Authorized Claim:	19.

3. Lender reaffirms that the information provided by Lender in the Part I Claim Request of the Authorized Claim Form remains true and correct, except as to actual results of the Legal Action plan for recovery of Delinquent Enrolled Loan, if any, which have modified the Legal Action plan for recovery of Delinquent Enrolled Loan as noted in the narrative of the actual results provided above.
4. Lender reaffirms the representation and warranties set forth in Section C in the Part I Claim Request of the Authorized Claim Form as if made on the Part II Claim Request Date.
5. Lender certifies that all or a portion of the net Delinquent Enrolled Loan remains outstanding, and has remained outstanding, for at least ninety (90) days from the Part I Claim Request Date.

Lender certifies that the above information is true and correct to the best of its knowledge, and it submits this Part II Claim Request of the Authorized Claim Form to the Project Manager as required by the Loan Guarantee Agreement, and requests disbursement to the Lender of so much of the available MSF Guarantee Obligation not to exceed the amount shown in Box 19 in the amount of: \$ _____.

Signed effective _____, _____ (“Part II Claim Request Date”).

LENDER

By: _____

Name: _____

Its: _____

FOR PROJECT MANAGER USE ONLY:

Part II Claim Request Review:

Total remaining Authorized Claim (Box 19) 20. \$ _____

Total amount of the remaining MSF Guarantee Obligation (as limited by the MSF Guarantee Cap): 21. \$ _____

Less all previously paid Authorized Claims on other Enrolled Loans since the Part I Claim Request Date: 22. \$ _____

Plus all reimbursements to MSF Guarantee Obligation since the Part I Claim Request Date: 23. \$ _____

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Remaining MSF Guarantee Obligation as to the Part II
Request on the Authorized Claim:
(Refer to Section 6 of the Loan Guarantee Agreement)

24. \$ _____

Pursuant to the Loan Guarantee Agreement:

_____ The Part II Claim Request for further payment on the Authorized Claim in the amount of \$ _____ (Box 24) is approved to proceed for disbursement to Lender.

[Or]

_____ The Part II Claim Request for further payment by the MSF is rejected.

Name:
Project Manager
Dated: _____

DRAFT

**EXHIBIT F
ANNUAL COMPLIANCE CERTIFICATE**

January 31, 20XX¹¹

This Annual Compliance Certificate is being delivered pursuant to that certain SSBCI 2.0 Loan Guarantee Agreement dated as of MONTH XXXXXX, 20XX, CASE-XXXXXXX (as amended, modified, supplemented, extended, and restated from time to time), by and among the Michigan Strategic Fund, (the “MSF”) and LENDER (the “Lender”) (the “Agreement”). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

The undersigned, in the name and on behalf of the Lender (and not in an individual capacity), hereby certifies, represents, and warrants that as of the date of this Annual Compliance Certificate:

1. The Lender has complied and is in compliance with all the terms, covenants, and conditions of the Agreement, except for such noncompliance, if any, described on Schedule I attached (which disclosure will not constitute the MSF’s waiver or acceptance thereof). *[If any are described, state the nature and status thereof and actions proposed to be taken with respect thereto.]*

2. No Default or Event of Default exists, except for such defaults or events of defaults, if any, described on Schedule II attached (which disclosure will not constitute the MSF’s waiver or acceptance thereof). *[If any are described, state the nature and status thereof and actions proposed to be taken with respect thereto.]*

3. The representations of the Lender contained in Section 4 of the Agreement, and the covenants of the Lender contained in Section 5 of the Agreement are true, with the same effect as though such representations and warranties and covenants were made on the date hereof, except for breaches of such representations and warranties and covenants, if any, described on Schedule III attached (which disclosure will not constitute the MSF’s waiver or acceptance thereof). *[If any are described, state the nature and status thereof and actions proposed to be taken with respect thereto.]*

4. No default or event of default exists by Lender under any of the Credit Facilities, applicable Credit Facility Documents, or the End Loan Documents and no event exists which, with the giving of notice or the lapse of time, or both, would be reasonably likely to constitute such a default or event of default therein, except, in each case, for such defaults or events of defaults, if any, described on Schedule III attached (which disclosure will not constitute MSF’s waiver or acceptance thereof). *[If any are described, state the nature and status thereof and actions proposed to be taken with respect thereto.]*

5. Attached as Schedule IV is the annual report covering the immediately preceding twelve (12) months ending September 30 of each calendar year, which at a minimum, must reflect the detail on the total amount owed by each Borrower on each End Loan as of the applicable September 30, and the payment aging details covering each of the previous twelve (12) months of payments due the Lender from each Borrower on each End Loan.

(remainder of page intentionally left blank)

¹¹ To be delivered on January 31, 20XXX and on January 31 of each year thereafter.

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The undersigned has executed this Annual Compliance Certificate as of the date first above written.

LENDER

By: _____
Its: _____

DRAFT