

**APPENDIX B  
BORROWER ASSURANCES**

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

**A. STATE OF MICHIGAN REQUIREMENTS**

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

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

- i for the development of a stadium or arena for use by a professional sports team;
- ii to finance the construction or purchase of residential housing;
- iii to finance Passive Real Estate Ownership. Passive Real Estate Ownership means ownership of real estate for the purpose of deriving income from speculation, trade or rental, except that such term shall not include: a) the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or b) ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase;
- iv for the development of a casino regulated by this state under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino at which gaming is conducted under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or property associated or affiliated with the operation of either type of casino described in this subdivision, including, but not limited to, a parking lot, hotel, motel, or retail store;
- v to provide money to a person who has been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more;
- vi to provide money to a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more;
- vii to provide money to a business enterprise to induce qualified businesses or small business to leave this state;
- viii to provide money that would contribute to the violation of internationally recognized workers rights, as defined in section 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a country other than the United States, including any designated zone or area in that country; or
- ix to provide money to a corporation or an affiliate of the corporation who is incorporated in a tax haven country after September 11, 2001, while maintaining the United States as the principal market for the public trading of the corporation's stock;

## **B. FEDERAL REQUIREMENTS**

1. **Borrower Size.** Borrower does not have more than 500 employees (as defined in 13 C.F.R. Part 121.106).
2. **Business Purpose.** The Loan proceeds will be used for a "business purpose." A business purpose includes, but is not limited to, start up costs, working capital, business procurement,

franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

3. **Prohibited Use of Loan.** The loan proceeds will not be used for any impermissible purpose under the SSBCI or the SSBCI CAP, including:
- a) has not been made in order to place under the protection of the approved SSBCI CAP prior debt that is not covered under the approved SSBCI CAP and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender;
  - b) is not a refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender;
  - c) is a new extension of credit to the Borrower, and shall not be used to support existing extensions of credit – including but not limited to prior loans, lines of credit or other borrowing – that were previously made available as part of a state small business credit enhancement program;
  - d) is not to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or Local Government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or Local Government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. §1352;
  - e) is not to pay any costs incurred in connection with: (i) any defense against any claim or appeal of the United States Government, any agency or instrumentality thereof (including the US Department of Treasury), against the State of Michigan, or (ii) any prosecution of any claim or appeal against the United States Government, any agency or instrumentality thereof (including the US Department of Treasury), which the State of Michigan instituted or in which the State of Michigan has joined as a claimant;
  - f) does not exceed the principal amount of \$5 million;
  - g) will not be used to pay the salary of any individual engaged in activities related to the SSBCI who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal government computer or while performing official Federal Government duties;
  - h) to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or Local Government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or Local Government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. §1352;
  - i) to repay delinquent Federal or State income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
  - j) to repay taxes held in trust or escrow, e.g. payroll or sales taxes;

- k) to reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or
- l) to purchase any portion of the ownership interest of any owner of the business.

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

- a) an executive officer, director, or principal shareholder of the Lender;
- b) a member of the immediate family of an executive officer, director, or principal shareholder of the Lender; or
- c) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family.

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

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

- a) a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business;
- b) a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a Community Development Financial Institution;
- c) a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;
- d) a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or
- e) a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

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

7. **SSBCI Reporting.** The Borrower shall cooperate with the Lender, the MSF, the MEDC, and any of their representatives, and provide information necessary for the MSF, to provide reports and any other information required from time to time under the SSBCI, including any rules, guidelines and regulations which may be promulgated, or amended from time to time, including without limitation, no later than February 15 following each calendar year in which any part of the Loan was made and through February 15, 2017 (and at such other times as requested by the MSF for it to comply with US Department of Treasury and SSBCI requirements), the Lender shall provide the MSF with the following information for each such Loan, in such form as the MSF or the US Department of Treasury may from time to time prescribe:
- a) The census tract and zip code of the Borrower's principal location in the State of Michigan;
  - b) The Borrower's Employer Identification Number (EIN);
  - c) The total principal amount of each such Loan loaned/authorized as a line of credit, and of that amount, the portion that is from non-private sources;
  - d) The date of the initial disbursement of the Loan;
  - e) The insurance premiums paid by the Borrower, the Lender and the MSF;
  - f) The Borrower's annual revenues in its last fiscal year;
  - g) The Borrower's Full Time Equivalent employees;
  - h) The 6-digit North American Industry Classification System (NAICS) code for the Borrower's industry;
  - i) The year the Borrower was incorporated or, as applicable, organized;
  - j) The estimated number of jobs created or retained as a result of the Loan;
  - k) The amount of additional private financing occurring for or on behalf of the Borrower after the closing of the Loan; and
  - l) As may be requested by the Lender or the MSF from time to time, any other information from time to time required by the MSF or under the SSBCI, including any rules, guidelines and regulations, which may be promulgated or amended thereunder.

**BORROWER:** \_\_\_\_\_

\_\_\_\_\_  
By:  
Its:

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