

CAPTIAL ACCESS PROGRAM

Agreement No. \_\_\_\_\_

MASTER AGREEMENT  
Between

ILLINOIS DEPARTMENT OF COMMERCE  
AND ECONOMIC OPPORTUNITY  
and

\_\_\_\_\_  
(PARTICIPATING LENDER NAME)

\_\_\_\_\_  
(PARTICIPATING LENDER ADDRESS)

\_\_\_\_\_  
(PARTICIPATING LENDER CITY/STATE/ZIP + 4)

ATTN: \_\_\_\_\_  
(PARTICIPATING LENDER CONTACT / TITLE)

PHONE/FAX: \_\_\_\_\_  
(PARTICIPATING LENDER)

FEIN: \_\_\_\_\_  
(PARTICIPATING LENDER)

The Participating Lender does business as a (please check one):

\_\_\_\_\_ Individual (01)

\_\_\_\_\_ Governmental (08)

\_\_\_\_\_ Sole Proprietor (02)

\_\_\_\_\_ Nonresident Alien (13)

\_\_\_\_\_ Partnership/Legal Corporation (03)

\_\_\_\_\_ Estate or Trust (10)

\_\_\_\_\_ Tax Exempt (16)

\_\_\_\_\_ Pharmacy (Non-Corp.) (11)

\_\_\_\_\_ Corporation providing or billing  
medical and/or health care services

\_\_\_\_\_ Pharmacy/Funeral Home/  
Cemetery (Corp.) (15)

\_\_\_\_\_ Corporation NOT providing or  
billing medical and/or health care services

\_\_\_\_\_ Limited Liability Company

(select applicable tax classification)

\_\_\_\_\_ D-Disregarded Entity

\_\_\_\_\_ C-Corporation

\_\_\_\_\_ P-Partnership

**ILLINOIS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY**

**CAPITAL ACCESS PROGRAM**

**LENDER TRUST INDENTURE**

THIS AGREEMENT is effective from the beginning date of \_\_\_\_\_, 201\_\_, through the ending date of March 31, 2017 (if not earlier terminated), and is by and between the Illinois Department of Commerce and Economic Opportunity (hereinafter the "Department") and \_\_\_\_\_ a (national/state banking association) whose address is \_\_\_\_\_ together with its successors and assigns (hereinafter the "Lender").

**RECITALS**

Whereas the Department has created the Capital Access Program (as hereinafter defined) under the authority granted to it by the federal State Small Business Credit Initiative (hereinafter "SSBCI") of the Small Business Jobs Act of 2010 (see Title III of P.L. 111-240); the Allocation Agreement dated July 26, 2011 between the United States Department of the Treasury ("US Treasury") and the State of Illinois; Article 5, Section 45 of Public Act 97-57 of the Illinois General Assembly; and, the Department of Commerce and Economic Opportunity Law (20 ILCS 605/605-1 *et seq.*); and

Whereas the purpose of the Capital Access Program (hereinafter "Program") is to foster economic development in Illinois by enhancing the availability of credit to small and medium-sized businesses from private sources of capital; and

Whereas the Department of Commerce and Economic Opportunity Law (30 ILCS 605/605-55) authorizes the Department to enter into any contracts which it deems "necessary, proper, and expedient in accomplishing its duties"; and

Whereas the Department finds the execution of this **LENDER TRUST INDENTURE** is necessary for the implementation and administration of the Program.

NOW, THEREFORE, the parties hereto agree as follows:

## 1. DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, each of the following words and terms used in this Agreement shall have the following meaning unless the context or use indicates a different meaning. Definitions shall be applicable to both the singular and plural forms of the terms as the context may require:

**"Agreement"** means this Lender Trust Indenture between the Lender and the Department wherein the Lender agrees to participate in the Capital Access Program.

**"Allocated Funds"** means funds awarded to the State of Illinois on account of the Allocation Agreement dated July 26, 2011 between the US Treasury and the State of Illinois.

**"Borrower"** means the recipient of a Loan from the Lender which is, has been, or will be filed by the Lender for enrollment under the Program, and all successors and assigns of such Borrower; provided such Borrower:

(a) is a for-profit corporation or limited liability corporation, partnership or sole proprietorship having seven hundred fifty (750) or fewer employees and is authorized to conduct business in the State of Illinois; and

(b) is not:

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

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

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

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

(5) a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales; or

(6) in the business of manufacturing or selling at wholesale, tobacco products, liquor or sexually explicit materials or in the business of manufacturing or selling firearms at wholesale or retail; and

(c) is not an executive officer, director or principal shareholder of the Lender; or a member of the immediate family of an executive officer, director or principal shareholder of the Lender; or a

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

**"Business Day"** means a day which is not a Saturday, Sunday or legal holiday on which banks located in the State of Illinois are authorized or required by law to be closed or a day when the Department is closed.

**"Claim"** means any claim filed by the Lender pursuant to Section 5.3 of this Agreement.

**"Department"** means the Illinois Department of Commerce and Economic Opportunity.

**"Eligible Loan"** means a loan made by the Lender to a "Borrower," as the term is defined in Section 1 hereof:

- (a) for which the Lender has made the representations and warranties required by Section 3.2 of this Agreement, and
- (b) for which the loan proceeds will be used for a "business purpose". 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 and 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; and
- (c) for which the loan proceeds shall not be used:
  - 1. to repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
  - 2. to repay taxes held in trust or escrow (e.g., payroll or sales taxes);
  - 3. to reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance;
  - 4. to purchase any portion of any ownership interest of any owner of the business;
  - 5. for any debt refinancing, except in the case of a renewal of a previously enrolled Line of Credit, which may be refinanced but cannot remain enrolled in the Program for more than 2 years. However, the loan may be used to repay the amount due on a matured loan or line of credit if all of the following conditions are met:
    - (A) the new loan or line of credit includes the advancement of new monies to the Borrower (excluding closing costs);
    - (B) the new credit is based on a new underwriting of the Borrower's ability to repay and a new approval by the Lender;

- (C) proceeds from the new credit may only be used to satisfy the outstanding balance of a loan or line of credit that has already matured or otherwise termed and the prior debt was used for an eligible business purpose, as defined above; and,
- (D) the new credit has not been extended for the sole purpose of refinancing existing debt owed to the Lender; and

6. for the construction or acquisition of residential housing.

**"Enrolled Loan"** means a loan enrolled by the Department under the terms and conditions set forth in Section 2 of this Agreement.

**"Lender"** means, for purposes of this Agreement, \_\_\_\_\_, an FDIC insured depository institution which maintains a branch office in the State of Illinois where deposits are accepted.

**"Line of Credit"** means a Line of Credit extended by the Lender to the Borrower.

**"Low to Moderate Income Area"** means an area or county within the State of Illinois that meets certain federal income guidelines taking into consideration the number of household members. To determine if a business is located in a Low to Moderate Income (LMI) area, go to <http://www.ffiec.gov/geocode/> and type in the address. Then click on "Get Census Demographic" in order to determine the income level of the tract.

**"Minority Owned Business," "Female Owned Business," "Business Owned by a Person with a Disability," "Minority Person," "Female," "Person with a Disability," and "Disabled"** shall have the meanings set forth in Section 2 of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act (30 ILCS 575/2) as follows:

**"Minority Owned Business"** means a business concern that is at least 51% owned by one or more minority persons, or in the case of a corporation, at least 51% of the stock is owned by one or more minority persons; and the management and daily business operations of which are controlled by one or more of the minority individuals who own it.

**"Female Owned Business"** means a business concern that is at least 51% owned by one or more females, or, in the case of a corporation, at least 51% of the stock is owned by one or more females; and the management and daily business operations of which are controlled by one or more of the females who own it.

**"Business Owned by a Person with a Disability"** means a business concern that is at least 51% owned by one or more persons with a disability and the management and daily business operations of which are controlled by one or more of the persons with disabilities who own it.

**"Female"** shall mean a person who is a citizen or lawful permanent resident of the United States and who is of the female gender.

**"Minority Person"** shall mean a person who is a citizen or lawful resident of the United States and who is: (i) African American (a person having origins in any of the black racial groups in Africa); (ii) Hispanic (a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race); (iii) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian

Subcontinent or the Pacific Islands); or (iv) Native American or Alaskan Native (a person having origins in any of the original peoples of North America).

**"Person with a Disability"** means a person who is a citizen or lawful resident of the United States and is a person qualifying as being disabled.

**"Disabled"** means a severe physical or mental disability that: (i) results from: amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, Crohn's disease, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, including stroke or epilepsy, paraplegia, quadriplegia or other spinal cord conditions, sickle cell anemia, ulcerative colitis, specific learning disabilities, or end stage renal failure disease; and (ii) substantially limits one or more of the person's major life activities.

**"Passive Real Estate Ownership"** means ownership of any present, future or contingent interest in real estate for the purpose of deriving income from speculation, trade, or rentals; except the term does not apply to ownership of real estate where more than 50% of the property is being used, or will be used by the Borrower during the term of the loan for the operation of his business.

**"Program"** means the Capital Access Program.

**"Reserve Fund Account"** means an interest bearing money market account established by the Lender to hold funds accumulated pursuant to this Agreement to cover Claims made by the Lender under Section 5.3 of this Agreement.

**"Veteran"** means an Illinois resident who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable, as specified in 38 U.S.C. 101(2). Active service includes full-time duty in the National Guard or a Reserve component, other than full-time duty for training purposes.

**"Veteran Owned Business"** means a business concern that is at least 51% owned by one or more persons who are veterans, or, in the case of a corporation, at least 51% of the stock in which is owned by one or more veterans; and the management and daily business operations of which are controlled by one or more of the veterans who own it.

## 2. ENROLLMENT OF LOANS IN THE PROGRAM

**Section 2.1. Loan Terms.** An Eligible Loan may provide for such interest rate, fees, and other terms and conditions as agreed to by the Lender and Borrower. The maximum amount of a loan available under this Program is \$1,000,000, and the maximum length of the term is 5 years (60 months) to any one borrower or companies that have the same common ownership. If the loan is in the form of a Line of Credit, the maximum amount of the Eligible Loan available to the Borrower under the terms of the Line of Credit shall be \$1,000,000, and the maximum length of the term is 2 years (24 months).

**Section 2.2. Loan Enrollment.** (a) Only Eligible Loans may be enrolled in the Program. The Lender shall file a loan for enrollment by causing the following to be delivered to the Department:

- (1) A Program Loan Enrollment Form (attached hereto as Exhibit 4) completed and signed by an authorized officer of the Lender;

(2) The Borrower's Representations (in the form attached hereto as Exhibit 3) completed and signed by the Borrower; and

(3) Evidence that a deposit was made in the Reserve Fund Account in the amount of the requisite non-refundable fee specified by Section 5.1 of this Agreement.

If there is information missing from an enrollment, the Lender has thirty (30) calendar days after notification to submit the missing information, or the enrollment will be denied.

(b) The Lender shall complete the requirements of this Section 2.2 within twenty (20) Business Days after the Lender makes a loan. For purposes of this Agreement, the date on which the Lender makes a loan is the earlier of: (i) the date on which the Lender disburses the proceeds of the loan to the Borrower, or makes such proceeds available to the Borrower in the case of a Line of Credit, or (ii) the date identified in a writing signed by the Lender according to which the Lender agrees to disburse the proceeds of the loan to the Borrower, or make such proceeds available to the Borrower in the case of a Line of Credit, subject only to the loan's enrollment in the Program.

(c) For the purposes of this Agreement, the filing of an Eligible Loan for enrollment shall be deemed to occur on the date of which the Department receives the documentation required by this Section.

**Section 2.3. Acknowledgment of Loan Enrollment.** (a) Within twenty (20) Business Days after receipt of the documentation required by Section 2.2 (a) of this Agreement, the Department shall mail or otherwise deliver to the Lender an acknowledgment of enrollment signed by an authorized representative of the Department. Each acknowledgment shall identify the amount of funds the Department will transfer to the Reserve Fund Account as provided by Section 5.1 of this Agreement.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the Department shall not accept loans for enrollment in the Program if the Department lacks sufficient funds in the allocation for the Capital Access Program within the State Small Business Credit Initiative Fund to transfer the requisite funds to the Reserve Fund Account as provided by Section 5.1 of this Agreement.

**Section 2.4. Amount of Loan to be Enrolled.** A Lender filing a loan for enrollment may not specify an amount to be covered under the Program which is less than the total amount of the loan. In addition, a Lender cannot enroll additions or increases to a Line of Credit, where the original loan was not enrolled in the program.

**Section 2.5. Restructuring of Enrolled Loans.** (a) The Borrower shall not be required to pay additional fees as a result of the restructuring of an Enrolled Loan, provided the outstanding principal balance of the Enrolled Loan is not increased as a result of such restructuring.

(b) If an Enrolled Loan is restructured and the outstanding principal amount of the loan is increased, the Lender may obtain coverage for the incremental amount by filing a new loan (consisting of the incremental amount) for enrollment under Section 2.2 of this Agreement. All required payments and transfers into the Reserve Fund Account shall be based on the (incremental) amount of the new Enrolled Loan.

(c) For purposes of this Agreement, a Line of Credit for which the maximum amount of funds available under the loan is not increased after the loan is enrolled in the Program, shall not be deemed to be a restructured loan based on fluctuations in the outstanding balance of the loan that are attributable to borrowing, repayments and reborrowing.

(d) When the Lender determines it is appropriate to convert an enrolled Line of Credit to a term loan, the Lender must notify the Department within twenty (20) Business Days of the conversion. **The Lender must also submit a written statement to the Department stating the loan is in good standing.** The Borrower shall not be required to pay additional fees as a result of the conversion. However, the new term loan shall only remain enrolled in the Program for the remaining duration of the original 2 year Line of Credit period.

(e) If the Line of Credit in Section 2.5 (d) above, is not fully paid at the end of the 2 year period, the Lender will have the option of re-enrolling the remaining balance into a term loan under the Program, for up to an additional three (3) years. In the event that the Line of Credit is re-enrolled into a term loan, the converted term loan will be considered a new loan, and the matching Program fee will be limited to 50% of the of the borrower's fee. However, this re-enrollment will not be considered refinancing of previous debt.

**Section 2.6. Payoff of an Enrolled Loan.** (a) If the outstanding balance of an Enrolled Loan which is not a Line of Credit is reduced to zero (0), the loan shall no longer be considered an Enrolled Loan.

(b) If an Enrolled Loan that is a Line of Credit has an outstanding balance of zero (0) for a twelve (12) month period, the Line of Credit shall no longer be considered an Enrolled Loan. The maximum period which a Line of Credit shall be considered an Enrolled Loan is two (2) years from the date the proceeds of the loan are first available to the Borrower.

(c) Any amounts repaid to the Lender from a Borrower on an Enrolled Loan which are subsequently recovered by a trustee in bankruptcy (or a similar representative of creditors) as a preference under 11 U.S.C. 547 shall be treated as part of the outstanding balance of the Enrolled Loan for purposes of filing a Claim against the Reserve Fund Account.

**Section 2.7. Public Policy to Encourage Specified Borrowers.** Under the Business Enterprise for Minorities, Females, and Persons with Disabilities Act (30 ILCS 575/1), it is the public policy of the State of Illinois to promote and encourage the continuing economic development of Minority Owned Businesses, Female Owned Businesses, and Businesses Owned by a Person with a Disability. Under the Small Business Development Act (30 ILCS 750/9-4.3) the State of Illinois, through the Department, sought to encourage the making of loans for minority, veteran, female or disability small businesses. As part of the Department's application to the US Treasury for SSBCI funds, the Department detailed plans to provide access to capital for small businesses in low-to-moderate income areas ("LMI"), and minority, women, disabled, and veteran ("MWDV") owned/controlled businesses. The Department also agreed to certify and separately track MWDV and LMI borrowers. Lender agrees to cooperate with Departmental efforts at outreach to potential MWDV and LMI borrowers. Lender further agrees to cooperate with Departmental efforts to certify and separately track MWDV and LMI borrowers.

### 3. REPRESENTATIONS

**Section 3.1. Representations by the Department.** The Department makes the following representations and warranties:

(a) The Department has the necessary power under law to authorize, execute, and deliver this Agreement;

(b) This Agreement when executed will be valid, binding, and enforceable in accordance with its terms;

(c) The execution and performance of this Agreement by the Department will not violate or conflict with any instrument to which the Department is bound; and

(d) Money in the Reserve Fund Account shall be available to pay Claims under this Agreement.

**Section 3.2. Representations by the Lender.** The Lender makes the following representations and warranties:

(a) The Lender has the necessary power under law to authorize, execute, and deliver this Agreement;

(b) This Agreement when executed will be valid, binding, and enforceable in accordance with its terms;

(c) The execution and performance of this Agreement by the Lender will not violate or conflict with any instrument to which the Lender is bound;

(d) The Lender agrees to certify the following to the Department (through the Loan Enrollment Form attached hereto as Exhibit 4) when filing a loan for enrollment under the Program:

(1) The Loan has not been made in order to place under the protection of the Program prior debt that is not covered by the Program and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender;

(2) The Loan is not a refinancing of a loan previously made to the Borrower by the Lender or an affiliate of the Lender;

(3) The Lender is not attempting to enroll the unguaranteed portions of SBA-guaranteed loans;

(4) The loan being filed for enrollment is an Eligible Loan;

(5) The Lender has established the Reserve Fund Account as required by Section 4 herein;

(6) The Lender bears 20% or greater of any loss from a default of the Eligible Loan;

(7) The Lender has provided the Borrower with the "Notice to Borrower" form (attached hereto as Exhibit 2);

(8) The Lender is in material compliance with all federal and state laws, rules, and regulations pertaining to the making of loans (including 31 C.F.R. § 103.121 and 31 C.F.R. § 1020.220); notwithstanding the above, if the Lender is under a Memorandum of Understanding or other regulatory action, it has submitted a certification from its Corporate Counsel affirming that the Lender has addressed the issues raised by the government and is in substantial compliance with the regulator's guidance;

(9) The Loan is not a partial enrollment;

(10) In the case of a Term Loan, the distribution to the Borrower is a single pay note;

(11) As required by Section 3011(c)(2) of the Small Business Jobs Act of 2010, 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" means the following: 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 Lender, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the Lender; and

(12) The Lender shall make available to the Treasury Inspector General all books and records related to the use of the Allocated Funds, subject to the Right to Financial Privacy Act (12 U.S.C. § 3401 *et seq.*), including detailed loan records, as applicable.

However, notwithstanding the above certifications, the Lender may use Allocated Funds to support a new loan that repays the amount due on a matured loan or line of credit when all of the following conditions are met: (1) the new loan or line of credit includes the advancement of new monies to a Borrower; (2) the new loan is based on a new underwriting of the Borrower's ability to repay and a new approval by the Lender; (3) proceeds from the new loan may only be used to satisfy the outstanding balance of a loan or line of credit that has already matured or otherwise termed and the prior debt was used for a business purpose (as defined herein); and (4) the new loan has not been extended for the sole purpose of refinancing existing debt owed to the Lender. When all of these conditions are met, and an applicable loan is made, the Lender shall maintain documented substantiation that these four criteria were met.

The Lender hereby acknowledges and agrees that the Department shall have no legal or financial responsibility to the Lender with respect to the Reserve Fund Account or otherwise with respect to this Agreement or any aspect of the Program, except as the Lender and Department may agree under the terms of their agreement establishing the Reserve Fund Account. Further, the Lender acknowledges that the Reserve Fund Account (and all interest that shall accrue thereon) is owned by, and is the property, of the Department.

### **Section 3.3. Miscellaneous Certifications by the Lender.**

- (a) **Compliance with Applicable Law.** The Lender certifies that it shall comply with all applicable provisions of Federal, State and local law in the performance of its obligations pursuant to this Agreement.
- (b) **Defaults on Education Loans.** The Lender certifies that this Agreement is not in violation of the Educational Loan Default Act (5 ILCS 385/3) prohibiting certain contracts to individuals who are in default on an educational loan.
- (c) **Discrimination/Illinois Human Rights Act.** The Lender certifies (i) that it will not commit unlawful discrimination in employment in Illinois as that term is defined in Article 2 of said Act; (ii) that it will comply with the provisions of Article 5 of the Act regarding equal employment opportunities and affirmative action; and, (iii) that it will comply with policies and procedures established by the Department of Human Rights under Article 7 of the Act regarding equal employment opportunities and affirmative action. The Lender further certifies that, if applicable, it will comply with the Public Works Employment Discrimination Act (775 ILCS 10/0.01 *et seq.*).

- (d) **Federal, State and Local Laws; Tax Liabilities; State Agency Delinquencies.** The Lender certifies that it will comply with all federal, state and local laws, including but not limited to the filing of any and all applicable tax returns. In the event that a Borrower is delinquent in filing and/or paying any federal, state and/or local taxes, the Department shall disburse loan funds only if the Borrower enters into an installment payment agreement with said tax authority and remains in good standing therewith. Borrower is required to tender a copy of any such installment payment agreement to the Department. In no event may Borrower utilize loan funds to discharge outstanding tax liabilities or other debts owed to any governmental unit. The Lender certifies that (i) it is current as to the filing and payment of any federal, state and/or local taxes applicable to Lender; and (ii) it is not delinquent in its payment of moneys owed to any federal, state, or local unit of government.
- (e) **Prohibition of Goods Derived from Child Labor.** The Lender certifies, in accordance with the State Prohibition of Goods from Child Labor Act (30 ILCS 584/1 *et seq.*), that no foreign-made equipment, materials, or supplies furnished to the State in connection with this Agreement have been produced in whole or in part by the labor of any child under the age of 12.
- (f) **Lien Waivers.** The Lender shall monitor any construction undertaken as part of a Project to assure that necessary contractor's affidavits and waivers of mechanics liens are obtained prior to release of Loan funds to contractors and subcontractors.
- (g) **Interagency Wetland Policy Act.** The Lender certifies that any proposed Project is compatible with established state policy regarding wetlands, pursuant to the Interagency Wetland Policy Act of 1989 (20 ILCS 830/1 *et seq.*). The Lender acknowledges that the Illinois Department of Natural Resources may, from time to time, monitor a proposed Project to ensure continued compliance with the aforementioned Act. In the event that a Project does not remain in compliance with the Act, such noncompliance shall constitute a breach of this Agreement, and failure to cure the breach within sixty (60) days after notice thereof will result in the termination of DCEO's participation in such Loan/Project.
- (h) **Bid Rigging and Bid Rotating.** The Lender certifies that it has not been barred from bidding on, entering into, or receiving State contracts as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code of 1961 (Bid Rigging or Bid Rotating, respectively) (720 ILCS 5/33E-3 and 5/33E-4).
- (i) **Sexual Harassment.** The Lender certifies it has written sexual harassment policies that include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the Lender's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department of Human Rights and the Human Rights Commission, including directions on how to contact them; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act (775 ILCS 5/2-105 *et seq.* and 775 ILCS 5/6-101). A copy of the policies shall be provided to the Department upon request.
- (j) **Americans with Disabilities Act Compliance.** The Lender certifies that services, programs, and activities contemplated under this Agreement are and will continue to be in compliance with the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 *et seq.*) and the regulations thereunder (28 CFR 35.130), which prohibit discrimination against persons with disabilities, whether directly or through contractual arrangements, in the provision of any aid, benefit, or service. The Lender further certifies that all facilities utilized by it in the performance of this Agreement comply with State accessibility laws.
- (k) **International Anti-Boycott Certification.** The Lender certifies that neither it nor any affiliate company is participating or will participate in an international boycott, as defined by the provisions of the U.S. Export Administration Act of 1979 or by the regulations of the U.S. Department of Commerce promulgated pursuant to the Act.

- (l) **Drug-Free Workplace Act.** The Lender certifies it is in compliance with the requirements of the Drug-Free Workplace Act (30 ILCS 580/1 *et seq.*).
- (m) **Lender's Good Standing.** The Lender certifies that it is in material compliance with all federal and state laws, rules, and regulations pertaining to the making of loans (including 31 C.F.R. § 103.121 and 31 C.F.R. § 1020.220); notwithstanding the above, if the Lender is under a Memorandum of Understanding or other regulatory action, it has submitted to DCEO a certification from its Corporate Counsel affirming that the Lender has addressed the issues raised by the government and is in substantial compliance with the regulator's guidance.
- (n) **Historic Preservation.** The Lender certifies that it will not expend funds under this Agreement which result in the destruction, alteration, renovation, transfer or sale, or utilization of a historic property, structure or structures, or in the introduction of visual, audible or atmospheric elements to a historic property, structure or structures, which will result in the change in the character or use of any historic property, except as approved by the Illinois Historic Preservation Agency. Historic Preservation Act (20 ILCS 3420/1 *et seq.*).

#### 4. ESTABLISHMENT OF THE RESERVE FUND ACCOUNT

Concurrent with the execution of this Agreement, the Lender hereby certifies that it has established a Reserve Fund Account, designated as the Capital Access Program Reserve Fund Account \_\_\_\_\_ (as identified in Exhibit 1 hereof) in which the Department shall have a one hundred percent (100%) undivided ownership interest.

#### 5. USE OF THE RESERVE FUND ACCOUNT

**Section 5.1. Payments and Transfers to the Reserve Fund Account.** The Lender shall determine the amount of the fee payable to the Reserve Fund Account by the Borrower in connection with a loan filed for enrollment. The amount paid by the Borrower shall not be less than 1.0% nor greater than 2.5% of the amount of the Enrolled Loan. The amount paid by the Lender shall be equal to the amount paid by the Borrower. The Lender may recover the cost of its contribution from the Borrower through fees or amortization. When enrolling a loan under Section 2 of this Agreement, the Department agrees to transfer funds to the Reserve Fund Account in an amount equal to the fee paid into the Reserve Fund Account by the Borrower and the Lender for the Enrolled Loan.

**Section 5.2. Ownership, Control, and Investment of the Reserve Fund Account.**

(a) The Reserve Fund Account, and all funds credited thereto, shall be under the exclusive control and ownership of the Department. The Department agrees it shall not withdraw funds from the Reserve Fund Account except as specifically provided in this Agreement. Unless money is paid or withdrawn out of the Reserve Fund Account according to the specific terms of this Agreement, all money paid into the Reserve Fund Account shall remain in the Reserve Fund Account.

(b) The Department agrees to deposit all funds required to be transferred under this Agreement into the Lender's Reserve Fund Account, provided:

- (1) the Reserve Fund Account must be maintained in an interest bearing money market account insured by the Federal Deposit Insurance Corporation; and
- (2) the Lender agrees not to assess any account or transaction fees or charges of any type against the Reserve Fund Account at any time.

If at any time the balance in the Reserve Fund Account exceeds the amount of federal deposit insurance coverage on the account, the Lender shall promptly notify the Department in writing. The Lender is under no obligation to procure separate, additional or private deposit insurance for any such amounts.

(c) All interest earned on funds in the Reserve Fund Account shall be credited to the Reserve Fund Account.

(d) The name on the reserve account must be:

Illinois Department of Commerce and Economic Opportunity  
Capital Access Program  
500 East Monroe  
Springfield, IL 62701-1643

(e) If, for any twenty-four month period, Lender has no activity on any Enrolled Loans, then the Department shall withdraw all funds from the Reserve Fund Account. Activity on any Enrolled Loans shall include making a claim under Section 5.3, filing a loan for enrollment under Section 2.2, or accepting payment of principal or interest on any Enrolled Loan.

**Section 5.3. Claims by the Lender Against the Reserve Fund Account.** (a) If the Lender charges off all or part of an Enrolled Loan on its books, the Lender may file a Claim with the Department by submitting a Capital Access Program Standard Claim Form (attached hereto as Exhibit 5), completed and signed by an authorized officer of the Lender. The Claim must be filed within thirty (30) Business Days of the Enrolled Loan's charge-off.

(b) The Lender's Claim may include, in addition to the outstanding balance of principal charged off, any accrued interest, plus one-half (1/2) of the reasonable written documented out-of-pocket expenses incurred in pursuing collection efforts, which may include expenses incurred to preserve collateral. In the event a claim is filed on an Enrolled Loan that has been enrolled for less than one year, the coverage would be limited to one half (1/2) of the outstanding principal, interest and out of pocket collection expenses.

(c) A Lender may file more than one Claim in connection with an Enrolled Loan if the original Claim represented a partial charge-off or if the Lender incurs additional collection expenses after filing an initial Claim. If the loan's enrollment has been less than one year the same rules apply as specified in (b) above. If multiple Claims are filed in connection with an Enrolled Loan, the sum of the principal, accrued interest, and collection expenses included in all Claims filed in respect to such Enrolled Loan may not exceed the aggregate permissible costs that may be included in a single Claim filed in respect to such Enrolled Loan, as specified in Paragraph (b) of this Section.

(d) The Lender shall determine when and how much to charge off on an Enrolled Loan in a manner consistent with the Lender's normal method for making these determinations on similar loans that are not Enrolled Loans.

(e) If the Lender files two (2) or more Claims contemporaneously, and if there are insufficient funds in the Reserve Fund Account at the time of filing to cover the aggregate amount of the Claims, the Lender may designate the order of priority it attaches to the payment of such Claims. The Department agrees to abide by such designated order of priority and to cause the payment of Claims in accordance with such order of priority, as provided by Section 5.4 hereof.

**Section 5.4. Payment of Claims.** (a) Upon receipt of a Claim filed by the Lender, the Department agrees to, within twenty (20) Business Days, authorize the Lender to withdraw from the Reserve Fund Account the amount of the Claim as submitted, unless the Department reasonably determines that:

(1) the Lender knowingly provided the Department with false information when it filed the loan for enrollment with the Department; or

(2) the Lender is not otherwise in material compliance with the terms of this Agreement.

(b) If there is insufficient money in the Reserve Fund Account to cover the entire amount of a Claim, the Department agrees to authorize the Lender to withdraw an amount equal to the current balance in the Reserve Fund Account and such payment shall be deemed to satisfy fully the Claim, and the Lender shall have no right to receive any further amount from the Reserve Fund with respect to such Claim.

**Section 5.5. Recovery by Lender Subsequent to Claim.** If, subsequent to the payment of a Claim by the Department, the Lender recovers from a Borrower or for the Borrower's account any amount for which payment of a Claim was made, the following shall apply:

(a) If the recovered amount, when added to the Claim previously paid by the Department in connection with an Enrolled Loan, exceeds the Lender's loss on that Enrolled Loan, the Lender must notify the Department, and promptly pay into the Reserve Fund Account the amount of the excess.

(b) For purposes of this Section and Section 5.6 of this Agreement, the Lender's loss on an Enrolled Loan shall be the amount of the principal and accrued interest charged off by the Lender plus one-half (1/2) of the reasonable and documented out-of-pocket expenses incurred by the Lender in pursuing collection efforts.

**Section 5.6. Subrogation.** (a) If the payment of a Claim under Section 5.4 of this Agreement has fully covered the Lender's loss on an Enrolled Loan or if the payment of a Claim when combined with any recovery from the Borrower has fully covered the Lenders loss, the Department shall be subrogated to the rights of the Lender with respect to any collateral, security, or other right of recovery in connection with the Enrolled Loan that has not been realized by the Lender. The Lender thereafter shall assign to the Department any right, title, or interest to any collateral, security, or other right of recovery in connection with the Enrolled Loan.

(b) If an assignment has been made under Section 5.6(a), the Department shall not be required to undertake any obligations of the Lender under the Lender's loan documents, except for obligations directly related to the Department's assigned rights of recovery in connection with the Enrolled Loan. The Lender agrees to provide the Department with all reasonable assistance thereafter, if requested, in proceeding with respect to any collateral, security, or other right of recovery, except that such reasonable assistance shall not require the Lender to incur any out-of-pocket expenses.

(c) If the Department desires to exercise the right of subrogation in connection with an Enrolled Loan, and the Department would be entitled to exercise that right except that the Lender's loss has not been fully covered, the Department, at its option, may pay from funds in the Reserve Fund Account an amount sufficient to cause the Lender's loss to be fully covered. A payment under this subsection may cover a principal amount not covered under the Program or not included in the Lender's Claim. Upon making a payment under this subsection, the Department shall be subrogated to the rights of the Lender in accordance with this Section 5.6(a).

(d) Notwithstanding any other provision of this Section 5.6, the Department may not exercise the right of subrogation unless the Department determines in its reasonable judgment that the Lender has not exercised reasonable care and diligence in conducting collection activities with respect to the Enrolled Loan, or the Department has a reasonable basis to believe that the Lender will not exercise reasonable care and diligence in the future with respect to conducting those collection activities.

**Section 5.7. Withdrawal of Excess Reserve Funds.** If reports filed pursuant to Section 6.1 indicate that for the immediately preceding twenty-four (24) month period the balance in the Reserve Fund continually exceeded the aggregate outstanding balance of all Enrolled Loans, the Department may withdraw from the Reserve Fund an amount not greater than the amount by which the Reserve Fund balance exceeded the aggregate outstanding balance of all Enrolled Loans as of the most recent report, unless the Lender has provided to the Department adequate documentation that at some time during such twenty-four (24) month period the aggregate outstanding balance of all Enrolled Loans exceeded the balance then in the Reserve Fund.

## 6. REPORTING REQUIREMENTS

**Section 6.1. Quarterly Summary Reports.** On or before the 30th day of the month following the end of each calendar quarter, the Lender shall submit to the Department a report of all Enrolled Loans and the outstanding balances of such Enrolled Loans, including any amount from private sources, the current balance of the Reserve Fund, interest earned, charge-offs and recoveries on Enrolled Loans in the immediately preceding calendar quarter.

**Section 6.2. Quarterly Summary Zipcode Reports.** On or before the 30th day of the month following the end of each calendar quarter, the Lender shall submit to the Department a report, organized by zip code, of all Enrolled Loans existing during the immediately preceding calendar quarter, containing for each of the Lender's Enrolled Loans the following information: (a) the census tract and zipcode of the Borrower's principal location in the state, (b) the date of initial disbursement under the Enrolled Loan, (c) the amount of the premium charges paid by the Borrower, Lender, and Department, (d) the Borrower's annual revenues at the time of initial loan enrollment in the Program based on the most recent fiscal year or calendar year (at the Lender's sole discretion), (e) the Borrower's full-time equivalent (FTE) employees at the time of initial loan enrollment in the Program, (f) the six digit North American Industry Classification System (NAICS) code for the Borrower's industry, (g) the year the Borrower was incorporated or formed, and (h) the number (as estimated by the Borrower as of the time of initial enrollment of the Enrolled Loan) of FTE jobs created or retained as a result of the Enrolled Loan in the 24 months following loan enrollment. The Lender may combine the reports required in this Section with other reports required in this Article.

**Section 6.3. Late Reporting.** If a report required under Section 6.1 or Section 6.2 is not filed within 30 calendar days beyond the required due date therefor, the Department, after notification to the Lender of such omission, may 1) conduct an inspection of the Lender's files with the reasonable costs thereof to be borne by the Lender, and 2) may make a withdrawal of excess reserves from the Reserve Fund Account based solely on the Department's reasonable determination of the amount of any excess funds.

## 7. TERMINATION OF OBLIGATION TO THE LENDER

The Department may terminate its obligation to the Lender to enroll loans under the Program if the Department determines in its sole discretion that the Lender is not in material compliance with the terms of this Agreement. Any such termination shall take effect on the date specified in a notice of

termination except that the termination shall not apply to a loan enrolled on or before the date on which a notice of termination is received by the Lender. If the Department is terminating the enrollment of loans for all participating Lenders under the Program, the Department shall provide at least ninety (90) days notice to the Lender. A termination under this Section is prospective only and shall not apply to loans previously enrolled. After termination, the amount covered under the Program for any Enrolled Loan may not be increased beyond the covered amount previously enrolled.

## 8. MISCELLANEOUS

**Section 8.1. Amendments to Agreement.** This Agreement may be amended at any time with the written consent of the parties; however, the parties agree that the Department may, with at least forty-five (45) days notice to the Lender, amend any provision of this Agreement. In the absence of the Lender's consent to such amendment, no amendment shall be applicable to loans made or enrolled prior to the effective date of the amendment, nor shall any such amendment diminish the Lender's rights with respect to funds in the Reserve Fund Account as of the effective date of the amendment.

**Section 8.2. Lender Information.** The Lender shall provide the Department with such information regarding its participation in the Program as the Department may reasonably request. The Lender consents to the transmittal to the Department, by any financial institutions regulatory agency of the federal or state governments, any information directly relating to the Lender's participation in the Program. To the extent permitted by law, the Department shall hold any information acquired pursuant to this Section confidential.

**Section 8.3. Audit.** Upon notice to the Lender and during its normal business hours, the Department, the US Treasury Inspector General, or any party that the Department or US Treasury Inspector General appoints for this purpose may inspect the files of the Lender relating to any Enrolled Loans.

**Section 8.4 Records retention.** The Lender shall maintain, for a minimum of five (5) years after the completion of this Agreement, adequate books, records and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this Agreement. The Lender further agrees to cooperate fully with any audit and to make this Agreement, and all books, records and supporting documents related to this Agreement, available to the Auditor General, chief procurement officer, internal auditor, Illinois Attorney General, the Department and the US Treasury Inspector General. Failure to maintain the books, records and supporting documents required by this Agreement shall establish a presumption in favor of the Department for the recovery of any funds paid by the Department under this Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

**Section 8.5. Limitation of Rights.** This Agreement shall be for the exclusive benefit of the Lender and the Department, and shall not be construed to give any person other than the parties hereto any legal or equitable right, remedy, or claim under, or in respect to, this Agreement.

**Section 8.6. Notices.** All notices, certificates, requests, filings or other communications under this Agreement shall be deemed sufficiently given when received by facsimile transmission or delivered by either a professional courier service, or certified mail, return receipt requested, addressed as follows:

Department: Department of Commerce and Economic Opportunity  
Attn.: Capital Access Program  
500 E Monroe  
Springfield, IL 62701

Phone: (217) 524-0165  
Fax: (217) 558-4860  
TDD: (217) 785-6055

Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 8.7. Contact Person.** The Lender shall designate a **single contact person** for purposes of sending and receiving all communications between the Department and the Lender required under this Agreement.

**Section 8.8. Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the undersigned parties and their respective successors and assigns.

**Section 8.9. No Personal Liability.** No member, officer, or employee of the Department or of the Lender, including any person executing this Agreement, shall be liable personally under this Agreement, or subject to any personal liability for any reason relating to the execution of this Agreement or the administration of the Program.

**Section 8.10. Collateral.** Except upon the exercise of the Department's right of subrogation as set forth in Section 5.6 of this Agreement, the Department shall have no legal or equitable interest in any collateral, security, or other right of recovery in connection with any Enrolled Loan; and the consent of the Department is not necessary for any amendment to the Lender's loan documents. This Section shall not be construed to relieve the Lender of its obligation to make payments to the Reserve Fund Account as provided under this Agreement.

**Section 8.11. Lender's Making and Collection of Loans.** Within the context of the objectives of the Program, the Lender agrees to exercise the same degree of care and diligence in the making and collection of Enrolled Loans as it does in making and collecting loans in the ordinary course of its business.

**Section 8.12. Captions.** The captions in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent or any provisions or sections of this Agreement.

**Section 8.13. Interpretation.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

**Section 8.14. Entire Agreement.** The Lender and the Department declare and represent that no promise, inducement or agreement not herein expressed or referred to has been made to any party. The parties further declare and represent that the entire agreement between the parties is contained within this Agreement, and that the terms of this Agreement are contractual and not a mere matter of recital.

**Section 8.15. Severability.** If any clause, provision or section of this Agreement is held illegal or invalid by any court, the invalidity shall not affect any of the remaining clauses, provisions or sections of this Agreement and this Agreement shall be construed and enforced as if the illegal or invalid clause, provision or section had not been in the Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on their behalf by their duly authorized officers as of the day and year first written above.

Lender's execution of this Agreement shall serve as its certification under oath that Lender has read, understands and agrees to all provisions of this Agreement and that the information contained in this Agreement is true and correct to the best of its knowledge, information and belief and that the Lender shall be bound by the same. Lender acknowledges that the individual executing this Agreement is authorized to act on the Lender's behalf. Lender further acknowledges that the deposit of cash collateral under this Agreement is conditioned upon the above certification.

**Lender:** By: \_\_\_\_\_ e-mail address of contact person \*

Title: \_\_\_\_\_

Date: \_\_\_\_\_ \* must be provided

Attest:

\_\_\_\_\_

**Department:**

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

Title: \_\_\_\_\_

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

Attest: \_\_\_\_\_

**EXHIBIT 1**

**DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY**

**CAPITAL ACCESS PROGRAM**

**PARTICIPATING BANK INFORMATION FORM**

Name of Lender: \_\_\_\_\_

Lender FEIN #: \_\_\_\_\_

Official Contact: \_\_\_\_\_

Position: \_\_\_\_\_

Street: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

County: \_\_\_\_\_

Phone: (\_\_\_\_\_) \_\_\_\_\_

Fax: (\_\_\_\_\_) \_\_\_\_\_

Reserve Fund Acct.#: \_\_\_\_\_

## EXHIBIT 2

### DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

#### CAPITAL ACCESS PROGRAM

#### "NOTICE TO BORROWER"

This notice is provided by the Department of Commerce and Economic Opportunity (Department) to for-profit business owners who may receive a loan from a bank under the Capital Access Program (CAP). It is strongly recommended that potential Borrowers carefully read and thoroughly understand the following notice before proceeding with a Capital Access Program loan.

The Capital Access Program is designed to leverage the capacity and resources of the private banking system in meeting the financing needs of Illinois firms. Because of bank regulation and other factors, many banks must limit business lending to loans that bear a high degree of security and a low degree of risk. CAP is designed to give banks a flexible and non-bureaucratic tool to make loans that are somewhat riskier than conventional loans, thus providing Illinois businesses with access to financing that might not otherwise be available.

The Program uses a special loan loss reserve to assist the bank in covering losses from a portfolio of loans made under the Program. For each bank participating in the Program, a special reserve fund is set up to cover future losses from the portfolio of loans that a bank makes under the Program. The special fund is **owned** and controlled by the Department and is located at the individual Lender's bank. Thus, each bank participating in the Program has its own Reserve Fund.

Each time that the Lender enrolls a loan in the Capital Access Program, the Borrower pays a one-time **non-refundable** fee into the Reserve Fund. The payment to be made into the Reserve by the Borrower must be between 1% and 2.5% of the loan amount. The Lender will match this amount and deposit it into the Reserve Fund. The Lender may recover the cost of its contribution from the Borrower through fees or amortization. The Department then matches the total amount of the Borrower's and Lender's payments and deposits funds into the Reserve Fund. Thus, for any loan made under the Program, an amount equal to anywhere from 4% to 10% of the loan amount is deposited in the bank's Reserve Fund. A bank can withdraw funds from this Reserve Fund to cover losses on loans made under the Program only with prior written approval from the Department.

A loan under the Program is likely to be more expensive than a conventional bank loan because of the one-time fee that must be paid into the Reserve Fund by the Borrower. However, the key point of the Capital Access Program is that it provides access to financing for many firms that do not qualify for conventional bank financing. Thus, if a Borrower believes that it may be qualified for a lower cost conventional loan, the Department strongly recommends that this option be fully explored prior to pursuing a loan under the CAP Program.

It is important to emphasize that a loan under the Program is a private transaction between the bank and the Borrower. The Department of Commerce and Economic Opportunity or any other state agency is not a party to the loan and plays no role in the bank's decisions about whether or not to make the loan, or in the setting of the interest rate, fees, duration, or any other terms or conditions of the loan. In addition, the Department plays no role in any decision by the bank with respect to enforcing the bank's rights under the loan contract. The bank's rights and remedies are delineated in the loan contract with the Borrower and in law applicable to any bank financing.

Key features of the Program are its flexibility and its lack of bureaucracy. The bank simply makes the loan, and then files the loan for enrollment with the Department within twenty (20) days after the loan is made. Loans can be long-term or short-term, term loans or lines of credit. Once a loan is made under the Program, the bank has the flexibility to recast, extend, or restructure the Enrolled Loan to accommodate the needs of the Borrower. Program eligibility is broad based, and, with few exceptions, encompasses any for-profit business located in Illinois that satisfies the bank's criteria.

For more information about the Capital Access Program, including information about participating banks, please contact the Department of Commerce and Economic Opportunity, Business Finance Division at **(217) 524-0165; TDD, (217) 785-6055.**

### EXHIBIT 3

#### DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

#### CAPITAL ACCESS PROGRAM

#### BORROWER'S REPRESENTATIONS

The undersigned Borrower (the "Borrower") acknowledges and understands the following:

(a) that the loan to be made by \_\_\_\_\_  
(the "Lender") to the Borrower on \_\_\_\_\_, 201\_\_ in the principal amount of  
\_\_\_\_\_ (\$\_\_\_\_\_) will be filed for  
enrollment by the Lender in the Capital Access Program (the "Program"), administered by the  
Department of Commerce and Economic Opportunity (the "Department"); and

(b) that the purpose of the Program is to assist the Lender in making loans to businesses that might  
otherwise not qualify for a conventional loan from the Lender; and

(c) that as a condition of having the loan filed for enrollment in the Program, the Borrower is required to  
pay a **non-refundable** fee to an account called the Reserve Fund Account, which is an Account  
established by the Department to help cover losses that the Lender may sustain on loans enrolled in the  
Program; and

(d) that the Borrower's payment of its **non-refundable** fee will be collected by the Lender for deposit in  
the Reserve Fund Account, and that other payments or transfers will be made to the Reserve Fund  
Account by the Department; and

(e) that the Lender must comply with all federal and state laws, rules, and regulations pertaining to the  
making of the loan including those laws, rules, and regulations prohibiting discrimination by the Lender  
on the basis of race, sex, age, or religion; and

(f) with respect to the proceeds of the Enrolled Loan the Borrower certifies that:

(1) the proceeds will be used for a "business purpose." 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 and 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) the proceeds will be used to finance a project or enterprise located in the State of Illinois;

(3) the proceeds will not be used:

(A) to repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;

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

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

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

(E) to refinance a loan previously made to the Borrower by the Lender, except in the case of a renewal of a previously enrolled Line of Credit which may be refinanced. However, such Line of Credit cannot remain enrolled in the Program for more than 2 years; or

(F) for the construction or acquisition of residential housing; and

(g) that the Borrower has indicated below the current number of full time equivalent (FTE) employees based on a 2000 hour work year (must be five hundred (500) or less to be eligible); and

(h) that the Borrower has indicated below the estimated number of FTE jobs (based on a 2000 hour work year) either retained or created as a result of receiving this loan; and

\*Current FTE Jobs \_\_\_\_\_ \*\*Jobs Created \_\_\_\_\_ \*\*\*Jobs Retained\_\_\_\_\_

**\*Current number of FTE jobs (based on 2000 hour work year).**

**\*\*Estimated number of FTE jobs created (based on 2000 hour work year) within two years from enrollment of the loan.**

**\*\*\* Only report existing jobs as retained if they would be lost if the loan is not made.**

(i) that the Borrower authorizes the Lender to report to the Department certain information regarding the loan and the Borrower as the Department may reasonably require; and

(j) that if the Lender fails in its collection responsibility, the Department reserves the right to continue collection procedures; and

(k) that the Borrower will report to the Department the amount of additional private financing occurring after the closing on this loan, if any is required; and

(l) that the Borrower is not an executive officer, director or principal shareholder of the Lender; or a member of the immediate family of an executive officer, director or principal shareholder of the Lender; or a related interest of such executive officer, director, principal shareholder, or member of the immediate family. For purposes of this paragraph, the terms "executive officer," "director," "principal shareholder," "immediate family", and "related interest" refer to the same relationship to a lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part; and

(m) that the Borrower is not:

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

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

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

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

(5) a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales; or

(6) in the business of manufacturing or selling at wholesale, tobacco products, liquor or sexually explicit materials or in the business of manufacturing or selling firearms at wholesale or retail; and

(n) as required by Section 3011(c)(2) of the Small Business Jobs Act of 2010, that 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 purposes of this certification, "principal" means the following: 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 Borrower, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the Borrower; and

(o) that the Borrower authorizes the Department to publicize the Borrower's participation in the Capital Access Program and hereby waives all applicable state and federal privacy laws which would otherwise prohibit such disclosure; however, such authorization does not permit the Department to publicize any personal financial information concerning the Borrower or any proprietary information concerning the Borrower's business. The Borrower acknowledges that DCEO is committed to protecting the privacy of its vendors, grantees and beneficiaries of programs and services. At times, DCEO may request social security numbers or other personal identifying information. Federal and state laws, rules and regulations require the collection of this information for certain purposes relating to employment and/or payments for goods and services, including, but not limited to, grants. DCEO also collects confidential information for oversight and monitoring purposes. Furnishing personal identity information, such as social security number, is voluntary; however, failure to provide required personal identity information may prevent an individual or organization from using the services/benefits provided by DCEO as a result of state or federal laws, rules and regulations; and

(p) that under penalties of perjury, it does business under the legal name of \_\_\_\_\_ - \_\_\_\_\_, which is identified with the following Federal Taxpayer Identification Number \_\_\_\_\_, and that it does business as a:

- |   |   |
|---|---|
| _____ Individual (01)   | _____ Governmental (08)                               |
| _____ Sole Proprietor (02)  | _____ Nonresident Alien (13)                          |
| _____ Partnership/Legal Corporation (03)  | _____ Estate or Trust (10)                            |
| _____ Tax Exempt (16)   | _____ Pharmacy (Non-Corp.) (11)                       |
| _____ Corporation providing or billing<br>medical and/or health care services     | _____ Pharmacy/Funeral Home/<br>Cemetery (Corp.) (15) |
| _____ Corporation NOT providing or<br>billing medical and/or health care services | _____ Limited Liability Company                       |
- (select applicable tax classification)
- \_\_\_\_\_ D- Disregarded Entity
- \_\_\_\_\_ C-Corporation
- \_\_\_\_\_ P-Partnership

(q) that it is a Corporation, Partnership or other entity (other than individual) with:

- A) \_\_\_\_\_ 25 or more employees at the time of issuance of this contract,  
or  
B) \_\_\_\_\_ 24 or fewer employees at the time of issuance of this contract.

If Option "A" is checked, and the amount of the DCEO's participation is \$5,000 or greater, the undersigned is notified that the Drug Free Workplace Act is applicable to the participation and it must comply with the terms of said Act. (30 ILCS 580/1 *et seq.*).

If Option "B" is checked, *or* the amount of the DCEO's participation is less than \$5,000, the Drug Free Workplace Act is not applicable to the participation; and

(r) that it shall comply with all applicable provisions of Federal, State and local law in the performance of its obligations pursuant to the loan; and

(s) that entering into the loan agreement is not in violation of the Educational Loan Default Act (5 ILCS 385/3) prohibiting certain contracts to individuals who are in default on an educational loan; and

(t) that it (i) will not commit unlawful discrimination in employment in Illinois as that term is defined in Article 2 of said Act; (ii) will comply with the provisions of Article 5 of the Act regarding equal employment opportunities and affirmative action; and, (iii) will comply with policies and procedures established by the Department of Human Rights under Article 7 of the Act regarding equal employment opportunities and affirmative action. The Borrower further certifies that, if applicable, it will comply with the Public Works Employment Discrimination Act (775 ILCS 10/0.01 *et seq.*): and

(u) that it will comply with all federal, state and local laws, including but not limited to the filing of any and all applicable tax returns. In the event that the undersigned is delinquent in filing and/or paying any federal, state and/or local taxes, the Department shall disburse loan funds only if the Borrower enters into an installment payment agreement with said tax authority and remains in good standing therewith. The Borrower acknowledges and agrees it is required to tender a copy of any such installment payment agreement to the Department. The Borrower acknowledges and agrees that it may not utilize loan funds to discharge outstanding tax liabilities or other debts owed to any governmental unit. The Borrower certifies

that (i) it is current as to the filing and payment of any federal, state and/or local taxes applicable to it; and (ii) it is not delinquent in its payment of moneys owed to any federal, state, or local unit of government; and

(v) that, in accordance with the State Prohibition of Goods from Child Labor Act (30 ILCS 584/1 *et seq.*), that no foreign-made equipment, materials, or supplies furnished to the State in connection with this Agreement have been produced in whole or in part by the labor of any child under the age of 12; and

(w) that it shall monitor any construction undertaken as part of a Project to assure that necessary contractor's affidavits and waivers of mechanics liens are obtained prior to release of Loan funds to contractors and subcontractors; and

(x) that any proposed Project is compatible with established state policy regarding wetlands, pursuant to the Interagency Wetland Policy Act of 1989 (20 ILCS 830/1 *et seq.*). The Borrower acknowledges that the Illinois Department of Natural Resources may, from time to time, monitor a proposed Project to ensure continued compliance with the aforementioned Act. In the event that a Project does not remain in compliance with the Act, such noncompliance shall constitute a breach of this Agreement, and failure to cure the breach within sixty (60) days after notice thereof will result in the termination of the participation in such Loan/Project; and

(y) that it has not been barred from bidding on, entering into, or receiving State contracts as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code of 1961 (Bid Rigging or Bid Rotating, respectively) (720 ILCS 5/33E-3 and 5/33E-4); and

(z) that it has written sexual harassment policies that include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the undersigned's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department of Human Rights and the Human Rights Commission, including directions on how to contact them; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act (775 ILCS 5/2-105 *et seq.* and 775 ILCS 5/6-101). A copy of the policies shall be provided to the Department upon request; and

(aa) that services, programs, and activities contemplated under this Agreement are and will continue to be in compliance with the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 *et seq.*) and the regulations thereunder (28 CFR 35.130), which prohibit discrimination against persons with disabilities, whether directly or through contractual arrangements, in the provision of any aid, benefit, or service. The Borrower further certifies that all facilities utilized by it in the performance of this Agreement comply with State accessibility laws; and

(bb) that neither it nor any affiliate company is participating or will participate in an international boycott, as defined by the provisions of the U.S. Export Administration Act of 1979 or by the regulations of the U.S. Department of Commerce promulgated pursuant to the Act; and

(cc) that DCEO is authorized to publicize information regarding its Participation in the Loan, including, without limitations, information related to the name of the borrower, the amount of the Loan and the amount of the participation by DCEO in the Loan. Notwithstanding the foregoing, DCEO is committed to protecting the privacy of its vendors, grantees and beneficiaries of programs and services. At times, DCEO may request social security numbers or other personal identifying information. Federal and state laws, rules and regulations require the collection of this information for certain purposes relating to employment and/or payments for goods and services, including, but not limited to, grants. DCEO also

collects confidential information for oversight and monitoring purposes. Furnishing personal identity information, such as social security number, is voluntary; however, failure to provide required personal identity information may prevent an individual or organization from using the services/benefits provided by DCEO as a result of state or federal laws, rules and regulations; and

(dd) that it will not expend any Loan funds which result in the destruction, alteration, renovation, transfer or sale, or utilization of a historic property, structure or structures, or in the introduction of visual, audible or atmospheric elements to a historic property, structure or structures, which will result in the change in the character or use of any historic property, except as approved by the Illinois Historic Preservation Agency. Historic Preservation Act (20 ILCS 3420/1 *et seq.*); and

**THIS SECTION TO BE COMPLETED BY AN APPLICANT THAT HAS MINORITY, FEMALE, DISABLED OR VETERAN OWNED BUSINESS STATUS.** This information is for DCEO's use only.

(ee) The undersigned certifies that the applicant for this Loan has Minority, Female, Disabled, or Veteran Owned Business status as defined in 30 ILCS 572/2 or 30 ILCS 750/9-4.3, as applicable, and certifies that it is one of the following entities (initial one).

- \_\_\_\_\_ Minority Owned Business Applicant
- \_\_\_\_\_ Female Owned Business Applicant
- \_\_\_\_\_ Disabled Owned Business Applicant
- \_\_\_\_\_ Veteran Owned Business Applicant

The Borrower acknowledges the foregoing and represents and warrants that it has not been promised or told by anyone that it has any legal, beneficial, or equitable interest in the **non-refundable** fee paid by the Borrower or the Lender or any other funds deposited in the Reserve Fund Account, and hereby waives any right, claim, or interest to any and all such funds paid or credited from time to time to the Reserve Fund Account.

Company Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

(Typed/Printed) \_\_\_\_\_

Title: \_\_\_\_\_

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

Business Description: \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT 4**  
**DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY**  
**AI CAPITAL ACCESS PROGRAM**  
**LOAN ENROLLMENT FORM**

<b><u>LENDER INFORMATION:</u></b>	
1. Name of Lender	
2. Reserve Fund Account No.	
<b><u>LOAN OFFICER INFORMATION:</u></b>	
3. Name/Position	
4. Address/City/State/Zip	
5. Phone	(       )
6. Fax	(       )
7. Email	
<b><u>BORROWER INFORMATION:</u></b>	
8. Contact/Position	
9. Company Name	
10. Address/City/State/Zip	
11. Primary Business Activity	
12. Phone	(       )
13. Fax	(       )
14. Annual Sales	\$
15. NAICS Code (6 digit)	
16. FEIN Number	
17. No. of Current Full-time Equivalent Employees (2000 hrs/yr)	
18. Estimated No. of FTE Jobs to Create in Two Years	
19. No. of FTE Jobs Retained (Lost if Loan Not Made)	
20. Minority, Women, Veteran or Disabled Owned	
<b>(Minority Type, Gender, Type of Disability-Provide Detail) *</b>	
21. Low to Moderate Income Area (Attach Copy)**	
<b><u>LOAN INFORMATION:</u></b>	
22. Lender Loan No.	
23. Note Date	\$
24. Loan Amount	\$
25. Borrower Reserve Payment (Attach copy of deposit)	\$
26. Bank Reserve Payment (Attach copy of deposit)	\$
27. Loan Type (Term/Line)	
28. Maturity Date (Months)	
29. Maturity (Months)	
30. Interest Rate of Financing (XX.XX%)	%
31. 1 <sup>st</sup> Payment Due	
32. Payment Amount	\$
33. Loan Purpose	
<b><u>DESCRIPTION OF COLLATERAL PROVIDED:</u></b>	

\* Example: African American Male or Hispanic Female, etc.)

\*\* Attach copy of printout from [www.ffiec.com](http://www.ffiec.com) website)

*In filing this Loan for enrollment, the Lender makes the Representations and Warranties as specified in Section 3.2 of the Department of Commerce and Economic Opportunity Capital Access Program Trust Indenture, and certifies/recertifies that; a. The Loan has not been made in order to place under the protection of the approved State program prior debt that is not covered under the approved State program and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender, b) The Loan is not a refinancing of a loan or investment previously made to that Borrower by the Lender or an affiliate of the Lender, and c) The Lender is not attempting to enroll any portion of an SBA-guaranteed loan. The Lender also recertifies that, as required by Section 3011(c)(2) of the Small Business Jobs Act of 2010, 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).*

Authorized Signature: \_\_\_\_\_

(Typed/Printed) \_\_\_\_\_

Title: \_\_\_\_\_

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

