

PARTICIPATION LOAN PROGRAM

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

MASTER PARTICIPATION 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<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<br>(select applicable tax classification) |
|   | _____ D-Disregarded Entity  |
|   | _____ C-Corporation   |
|   | _____ P-Partnership   |

## MASTER PARTICIPATION AGREEMENT

This Master Participation Agreement (the "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 "Lender"), a (national/state banking association, a Corporation, etc.), having its principal office at \_\_\_\_\_, and the Illinois Department of Commerce and Economic Opportunity (the "Department"), a department of the State of Illinois, having its principal office at 500 East Monroe Street, Springfield, Illinois 62701-1615.

### RECITALS

Whereas the Department has created the Participation Loan Program (as hereinafter defined) under the authority granted to it by the federal State Small Business Credit Initiative ("SSBCI") of the Small Business Jobs Act of 2010 (Title III of Public Law 111-240); the Allocation Agreement dated July 26, 2011 between the United States Department of the Treasury (the "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 (30 ILCS 605/605-1 *et seq.*); and

Whereas the Department of Commerce and Economic Opportunity Law (20 ILCS 605/605-55) authorizes the Department to enter into any contracts that it deems "necessary, proper, and expedient in accomplishing its duties"; and

Whereas the purpose of the Participation Loan Program (the "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, in pursuit of those goals, the Department may be willing, from time to time, to purchase participation interests in loans, including principal and interest payable there under, made by the Lender to certain Program-eligible businesses.

Now therefore, in consideration of the premises and the agreements contained herein, the Lender and the Department hereby 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:

**"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 for which a Participation Certificate has been or will be issued by the Lender and acknowledged by the Department, 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.

**"Closing Documents"** means all documents executed or delivered by the Borrower or the Lender with respect to a Loan, including without limitation a copy of the Lender's promissory note, the loan agreement, any security agreement, any financing statement or Uniform Commercial Code filing, any guaranty, any mortgage or assignment of rents, any pledge agreements, and any other document that secures repayment of the Loan.

**"The Department Approval Letter"** is a contingent approval letter prepared by the Department notifying the Lender that the Department is willing to purchase a Participation interest in a loan, and sets forth any special conditions related to the Participation that are binding. All approvals are contingent upon the Lender and Borrower meeting all requirements and providing adequate support documentation sufficient to comply with applicable laws and regulations to allow the Department to file the Loan Documents with the State Comptroller in order to obligate and obtain funds. (A sample Approval Letter is attached as Exhibit A). The Department Approval Letter, together with any approved revisions, will also set forth other terms and conditions specific to an individual Participation and are binding on the Lender and the Borrower.

**"The Department Rate"** means an interest rate set by the Department, either fixed, adjustable, or variable, to be used in calculating the amount of interest owed by the Lender to the Department on a given Participation, which rate shall initially be that shown on the Department Approval Letter related to such Participation. If the Department Rate as to such Participation is adjustable or variable, it shall be adjusted upwards or downwards every time the Lender Rate is adjusted so that the difference between the Department Rate and the Lender Rate shall always be the same as it was on the Purchase Date. The fixed, adjustable, or variable rate attribute must match the fixed, adjustable, or variable attribute of the Note that is all rates must be on the same basis.

**"Lender"** means a financial institution with which the Department has entered into an agreement or contract to provide loans to small businesses, in which the Department purchases an undivided interest in the otherwise qualifying loan.

**"Lender Rate"** means an interest rate set by the Lender, either fixed, adjustable, or variable (determined by the promissory note) used in calculating the amount of interest retained by the Lender (on all portions other than the Department portion) on a given Loan, which rate shall initially be that referenced in the Department Approval Letter related to such Loan. If the Lender Rate is adjustable or variable, the Department Rate shall be adjusted upwards or downwards every time the interest rate charged the Borrower is adjusted, so that the difference between the Lender Rate and the Department Rate shall always be the same as it was on the Purchase Date. The fixed, adjustable, or variable rate attribute must match the fixed, adjustable, or variable attribute of the promissory note, that is all rates must be on the same basis.

**"Loan"** means a loan made by the Lender to a Borrower in which the Department has or will have a Participation.

**"Loan Documents"** means the Closing Documents, the Participation Certificate, the Department Approval Letter, and all other documents executed or delivered by the Borrower or Lender with respect to a Loan, including without limitation the Borrower's application, business plan, and historical and projected financial statements and any financial statements and reports delivered by the Borrower to the Lender on an ongoing basis, the Lender's financial, repayment and collateral analysis, credit reports, and all periodic reports required to be delivered to the Department by the Lender under this Agreement.

**"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.

**"Note"** means the promissory note of the Borrower payable to the order of the Lender evidencing the Loan.

**"Note Rate"** means the blended interest rate (weighted average of Lender Rate and the Department Rate, based on the percentage of investment) agreed upon by the Lender and the Department that the Borrower will pay on the overall Loan, which may be either fixed, adjustable, or variable on a given Participation. This Note Rate will be specified in the Borrower's Note. The Department Rate and Lender Rate will be on the same fixed, adjustable, or variable basis as the Note.

**"Participation"** means, with respect to a Loan, the Department's undivided participation interest in such Loan, the Loan Documents and all of the Lender's right, title and interest pertaining to the Loan and all proceeds arising therefrom including, without limitation, any collateral for such Loan and any guaranties, mortgages, or other security interests obtained in connection therewith, expressed as a percentage and calculated from time to time by reference to the outstanding principal balance of the Loan.

**"Participation Amount"** means, with respect to a Loan, that portion of the original principal amount of the Loan purchased by the Department from the Lender, minus the aggregate principal amount repaid, as of any date, on that portion of such Loan purchased by the Department from the Lender.

**"Participation Certificate"** means the document evidencing the Department's Participation with respect to a Loan made between the Lender and the Borrower. A sample Participation Certificate is attached hereto as Exhibit B.

**"Project"** means the project of the Borrower for which Loan funds are to be used, including without limitation the Loan, any equity or any other funds provided by owners, shareholders, banks, or other financial institutions.

**"Prompt Payment"** means the time period within which the Lender must forward or remit the Department's pro rata share of the Borrower's payment of its Loan to the Department. The payment is considered timely if the Lender remits said payment to the Department within five (5) business days of receipt. In the event a payment is not remitted to the Department within five (5) business days, a late fee of the greater of 5% of the total payment due (per payment being withheld) or \$50 (per payment being withheld), whichever is greater, shall be automatically assessed. Arrearage will be determined from the date the payment should have been remitted through the date the payment is actually remitted. This late fee will be immediately due and owing. Additionally, any and all late fees due to Lender's delinquency shall not be the responsibility of, and shall not be absorbed by or charged to, the Borrower. Furthermore, the Lender may be subject to the above late fee if it fails to timely tender the Monthly Report/Distribution Summary and Transmittal (a sample of which is attached hereto as Exhibit D) to the Department. In extreme and compelling circumstances and upon the Lender's written request, the Department may, within its sole discretion, agree to waive any late fees due to a late payment.

**"Purchase Date"** means, with respect to a Participation, the date on which such Participation is purchased.

**"Servicing Expenses"** means any and all out-of-pocket liabilities, obligations, losses, penalties, expenses (including reasonable legal expenses and fees), disbursements, costs and damages, but excluding salaries and wages of its officers and employees and overhead expenses, incurred by the Lender, or for which the Lender is responsible, directly or indirectly, in connection with or arising as a result of (a) the enforcement of rights or remedies with respect to a Loan or the collection of same (including those arising due to suits, claims or counterclaims by another party against the Lender), and (b) the protection of the interests in any collateral securing the repayment of the Loan. "Servicing Expenses" does NOT include services or products provided by or through the Lender for the benefit of the Borrower, guarantor, or other responsible party to facilitate their compliance with agreed terms and conditions. The mere fact that the Lender pays an expense does not in itself qualify it as a "Servicing Expense;" rather there must be a

clear correlation to the enforcement of the Lender's rights or remedies. Business restructuring expenses do not constitute "Servicing Expenses" unless prior written approval is obtained from the Department.

**"Veteran"** means an Illinois resident who served in the active military, naval, or air service, and who was discharged or released there from 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 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. APPLICATIONS AND APPROVAL; SALE AND PURCHASE OF PARTICIPATION**

**2.1 Applications.** The Lender shall accept applications from prospective Borrowers and, if found creditworthy by the Lender and meeting the Program requirements contained in Section 3 below, the Lender shall submit the application and the details of the proposed Loan in a form satisfactory to the Department, together with copies of all financial statements and such other credit and financial materials as the Lender shall have in its files with respect to the Borrower, for the Department's review and purchase approval. The Lender must also obtain and submit to the Department a Certification executed by the Borrower (with necessary attachments) in substantially the form attached hereto as Exhibit C. The Department expressly reserves the right, in its sole discretion, to accept or reject any Borrower and/or any Loan. Once the Lender receives a Department Approval Letter, it may consummate the Loan and shall sell a Participation therein to the Department, pursuant to the terms and conditions set forth herein.

**2.2 Maximum Department Interest.** The Lender shall sell, assign and transfer, and the Department shall purchase and accept, subject to the terms and conditions of this Agreement, a Participation of not less than Ten Thousand Dollars (\$10,000) nor more than Two Million Dollars (\$2,000,000). In no case shall the amount of a Participation exceed the lesser of twenty-five percent (25%) of the total cost of any Project for which a Loan is made nor more than fifty percent (50%) of the Loan amount, and in no case shall the term of the Loan be any longer than ten (10) years; provided, however, that in the case of a Loan to a Minority Owned, Female Owned, Owned by a Person with a Disability, or Veteran Owned Business in which the Participation Amount is not in excess of Two Hundred Thousand Dollars (\$200,000) the amount of the Participation shall not exceed the lesser of forty percent (40%) of the total cost of the Project for which the Loan is made nor more than fifty percent (50%) of the Loan amount, unless the Director of the Department determines in writing that it is in the best interests of the State to waive that limit, and in no case shall the term of such a Loan be any longer than seven (7) years. The Department's percentage interest in each Loan shall never exceed the original applicable Participation Amount without prior written approval by the Department. The Department's Participation is computed by dividing the Department's principal balance by the Loan's principal balance. The Lender is responsible for monitoring and ensuring that, at any given time, the Department's Participation never exceeds its participation percentage. In the event the Department's Participation is ever greater than the Department's original participation percentage, the Lender must immediately pay the Department the excess principal to bring the Department's Participation into compliance with the Department's Approval Letter. At all times during which the Department owns a Participation in a Loan and until the Loan is paid in full, Lender shall continue to own the Loan and shall maintain an interest equal to at least fifty percent (50%) of the total amount of such Loan.

**2.3 Department Approval.** Upon receipt from the Lender of an application for a Loan with the applicable documents, the Department, in its sole discretion, shall determine whether it will purchase a

Participation interest in the loan. The Department shall make every attempt to make its determination within thirty (30) days of receipt of the application and applicable documents. If the Department approves the Loan application, it will issue and send, via U.S. Mail, facsimile or electronic communication, a Department Approval Letter to the Lender, which shall remain in effect for thirty (30) days. The Lender shall, within thirty (30) days after the Department Approval Letter is issued, sign it and return the original to the Department or the Department Approval Letter shall expire. If the Lender does not close the Loan within one hundred twenty (120) days after the Department's Approval Letter is issued, the Department's approval will expire, unless a written extension of time is granted by the Department. The Department, in its sole discretion, may grant an extension of time provided that no material change in either the scope of the Project, the financial condition of the Borrower (including guarantors), or its ability to repay the Loan as originally approved has occurred. If the Department rejects the Loan application, it will make every attempt to so advise the Lender within thirty (30) days of receipt of the application.

**2.4 Purchase and Funding of Participation.** Upon the closing of a Loan for which the Lender has received a Department Approval Letter, the Lender shall notify the Department's Manager, Business Finance Division, or authorized designee, of the closing and shall deliver all Closing Documents to the Department within ten (10) business days of the closing, otherwise the Department's Participation shall be void, unless the ten day period is waived or extended in writing by the Department. The Department shall acknowledge the Participation Certificate (a sample of which is attached as Exhibit B) by having its Director or authorized designee execute the Certificate and return it to the Lender. The Department shall process the Participation Certificate and any other documents necessary to fund its Participation, and as soon as practicable shall initiate the actions to cause delivery of its Participation Amount to the Lender. The Participation will be considered funded on the date the State Comptroller issues a warrant or on the date the funds are electronically transferred to the Lender. Interest will begin to accrue on the date the Lender receives the funds. The Lender will be responsible for the timely movement/distribution of the Department funds to the Borrower.

### **3. SSBCI PROGRAM REQUIREMENTS**

Obligations of the Department will cease immediately without penalty or further payment being required (a) if the Allocated Funds for the Program are no longer available (whether they have all been otherwise utilized or the Department no longer has access to them) or (b) in any fiscal year the Illinois General Assembly fails to appropriate or otherwise make available sufficient funds for this Agreement. The Department and the Lender acknowledge that the Program will be funded, in whole or in part, by State Small Business Credit Initiative Program funds, as available, and as such, both the Department and the Lender agree that the use of funds pursuant to this Agreement shall be governed by, and not be in derogation of, any rules, regulations, or guidelines for the Program promulgated or issued by the US Treasury or the State of Illinois. As to each Loan in which the Department purchases a Participation, the Lender agrees that it will have determined that all of the following are true and correct:

(A) The Project would not be undertaken unless the Loan is provided. The full amount of the Loan would not be made unless the Participation is purchased, or unless the Loan is being provided as an incentive to attract or retain a business in Illinois, or that the loan is being made to a business located in or relocating to a Low to Moderate Income Area;

(B) The purchase of the Participation will cause a Project to be undertaken in Illinois that has the potential to create or retain substantial employment in relation to the amount of the Loan or to modernize or improve the competitiveness of the Borrower;

(C) The Project is a new plant start-up, modernization, expansion or a new venture opportunity in Illinois, and it is not a relocation of an existing business from another site within the State of Illinois unless that relocation results in substantial employment growth in relation to the amount of the Loan;

(D) The Borrower is a credit disadvantaged firm, such as a business start-up or other young firm, or an industrial expansion, modernization, or environmental upgrade for a mature firm;

(E) The proceeds of the Loan 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. Loan proceeds will not be used:

- (i) to repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
- (ii) to repay taxes held in trust or escrow (e.g., payroll or sales taxes);
- (iii) to reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance;
- (iv) to purchase any portion of any ownership interest of any owner of the business;
- (v) to place under the protection of the Program prior debt that is not covered under the Program and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender;
- (vi) to refinance a loan previously made to the Borrower by the Lender or an affiliate of the Lender; or
- (vii) to enroll the unguaranteed portions of SBA-guaranteed loans;

However, notwithstanding the above, a Loan may repay 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 the 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.

(F) 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). Furthermore, the Lender is required, on an ongoing basis, to notify the Department of any changes in the sex offender status of its Principals. 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;

(G) 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);

(H) The Borrower is ready to implement the Project and has the financial ability to carry out the Project;

(I) The Borrower is responsible and creditworthy;

(J) The Loan is protected by security, which may include, as available, first or second mortgage positions on real or personal property, royalty payments on sales of products or services, or any other security satisfactory to the Department to secure repayment of the Loan. Personal notes or guaranties have been executed by persons owning more than twenty (20) percent of the Borrower;

(K) The Loan Documents are in an amount and form, and contain such terms and provisions with respect to property insurance, repairs, alterations, payment of taxes and assessments, delinquency charges, default remedies, additional security, and other matters, adequate to protect the State's interest in ensuring repayment;

(L) Guarantors are responsible and creditworthy. Guarantors' assets have been verified and will undergo periodic review both to ensure their continuing capacity to provide performance guaranties in the amounts required to ensure repayment, and to ensure that the same assets have not been pledged or are supporting other loans or guaranties; and

(M) 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, Businesses Owned by a Person with a Disability, and Veteran Owned Businesses (30 ILCS 575 and 30 ILCS 750/9-4.3). The Department is desirous of certifying and tracking Loans for small businesses in Low-to-Moderate Income Areas and Loans for Minority Owned Businesses, Female Owned Businesses, Businesses Owned by a Person with a Disability, and Veteran Owned Businesses. Lender agrees to cooperate with the Department's efforts to certify and separately track these kinds of Loans. Lender further agrees to cooperate with Departmental efforts at outreach to such businesses.

#### **4. COMPENSATION TO LENDER**

The Borrower shall pay interest to the Lender at the rate agreed upon between the Lender and the Borrower. The difference, if any, between the amount of interest paid by the Borrower to the Lender with respect to the Participation Amount and the amount of such interest paid by the Lender to the Department may be retained by the Lender with the consent of the Department. All application fees collected by the Lender, with respect to the Loan, may be retained in their entirety by the Lender.

#### **5. OWNERSHIP INTEREST IN PARTICIPATION LOAN, LOAN DOCUMENTS AND RECORDS, LIENS, SECURITY, GUARANTIES, AND OTHER COLLATERAL**

**5.1 The Department's Undivided Interest.** Upon the Department's purchase of a Participation in a Loan, and pursuant to the provisions of Section 2, the Department shall, without the necessity of any written instrument of assignment or other document, become vested with an undivided equitable ownership interest (proportional to such Participation from time to time) in: (i) the Loan; (ii) the Loan

Documents; and (iii) any other rights and claims of the Lender with respect to the Loan. If the Lender acquires any security interests or liens granted by any of the Loan Documents, the Department shall have an undivided interest in such security interest or lien equal to its Participation in the Loan, notwithstanding the fact that the security interest or lien is in the name of, and/or possession is maintained by, the Lender.

**5.2 The Lender as Trustee.** All Loan Documents and the rights conveyed by them executed and delivered in connection with the Loan shall be held by the Lender in trust for the pro rata benefit of the Lender and the Department. The Lender is authorized to retain the Note and the Loan Documents in the Lender's name and to deal with parties other than the Department as though the Lender were an absolute owner of the Loan and the Loan Documents. Any person, firm or corporation may deal with the Lender concerning the Loan in the same manner as if the Participation was not outstanding and the Lender was the sole owner of the Loan, as limited by Section 6.5, 6.6, and 6.7 of this Agreement. The Lender may perform any of its obligations hereunder by or through its agents, employees or attorneys.

**5.3 Limits of the Department's Interest.** Although the Lender holds for the Department's proportional benefit all collateral securing performance and payment of a Borrower's obligations and liabilities under and in connection with any Loan, the Department shall have no interest in any other property taken as security for any other credit, loan or financial accommodation made or furnished to the Borrower by the Lender in which the Department has no Participation. This shall include any property now or hereafter in the Lender's possession or under the Lender's control or in any deposit held that may be or may become security for performance or payment of a Borrower's or guarantor's obligations and liabilities under and in connection with other indebtedness owing to Lender by reason of the general description contained in any other instrument held by the Lender or by reason of any right of setoff, counterclaim, banker's lien or otherwise; provided, however, if such property, deposit, indebtedness or the proceeds thereof shall be applied to the payment or reduction of principal, interest, fees or any other amounts owing by a Borrower or guarantor in connection with a Loan, then the Department shall be entitled to its pro rata share of such payment.

## **6. COLLECTIONS, DISBURSEMENTS AND ADMINISTRATION**

### **6.1 Collection and Transfer of Payments.**

(A) The Lender, as servicer of the Loan, shall be obligated to collect, as the Department's trustee with respect to the Department's pro rata share thereof, all payments of interest and principal due and payable on the Loan, together with any charges, fees, costs, expenses and any and all other amounts due on or in connection with the Loan Documents, including without limitation all Servicing Expenses incurred by Lender. If the Lender receives, collects or applies in full an interest payment with respect to a Loan, the Lender will remit to the Department interest on the Participation Amount at a rate equal to the Department Rate. If the Lender receives, collects or applies only a partial payment of interest with respect to a Loan, the Lender will remit to the Department interest on the Participation Amount of such Loan at a rate equal to the amount due the Department under the preceding sentence multiplied by a fraction, the numerator of which is the amount of interest then received, collected or applied by the Lender from the Borrower and the denominator of which is the total amount of interest then due by the Borrower to the Lender. If the Lender receives, collects or applies a principal payment or prepayment with respect to a Loan, the Lender will remit to the Department its pro rata share of such amount. Unless the Lender is otherwise entitled to apply payments as provided in Section 9 hereof, the Lender shall promptly remit the Department's share of payments on account of principal and interest to the Department within five (5) business days of receipt.

(B) Payments are to be made by check payable to the Illinois Department of Commerce and Economic Opportunity and sent to 500 East Monroe Street, Accounting Office, Springfield, Illinois 62701-1615. The Department, at its option, may arrange for electronic payments from the Lender to the Department through a Department originated ACH debit from the Lender's account. Payments via electronic transfers must be coordinated with the Department's loan servicing representative in the Department Accounting Office. A Monthly Report/Payment Distribution Summary and Transmittal (a sample of which is attached as Exhibit D) must be completed and submitted with each and every payment remitted to the Department. The Monthly Report/Payment Distribution Summary and Transmittal shall disclose information, including but not limited to, the date the Lender received payment from or on behalf of the Borrower and the manner in which the Lender apportioned said payment between the Lender and the Department. In the event that the Borrower fails to remit a scheduled payment to the Lender, the Lender, nevertheless, must submit the Monthly Report/Payment Distribution Summary and Transmittal to the Department indicating either that no payment was received or that no payment was due and owing to the Department.

(C) In the event that a payment is due only to the Lender and no corresponding pro rata payment is due to the Department, the Lender must report and document such an event to the Department by completing and submitting a Monthly Report/Payment Distribution Summary and Transmittal to the Department within five (5) business days of receipt of the Borrower's payment, regardless of whether the Lender received payments from or on behalf of the Borrower prior to the Department's funding.

## **6.2 Loan Servicing and Application of Payments.**

(A) In its handling of the Loan and any collateral security rights under the Loan Documents, the Lender shall exercise the same care and due diligence it exercises when it processes loans and collateral security rights on its own behalf and within the covenants and requirements in Sections 6.5, 6.6, and 6.7. Except for the express warranties contained herein, the Loan and Participation shall be for the amounts specified in the Department's Approval Letter. Except as provided for in Section 18.1, a Participation or a Loan may not be transferred by the Department or the Lender, (as applicable), in whole or in part, without the written consent of the other party. It is also understood that the Lender shall have no independent responsibility for the performance of a Borrower's obligation, nor for any failure or delay in exercising any rights or powers given the Lender by the Loan Documents, beyond undertaking the same care that the Lender exercises in the making and handling of loans and credits for its own account.

(B) All security evidenced by the Loan Documents and any additional security given by a Borrower shall be held by the Lender primarily as security for the Loan and shall not be used or applied toward payment of other obligations of the Borrower to the Lender, as long as the Loan remains unpaid and as long as this Agreement remains in effect; provided however, that nothing herein shall prevent the Lender from collecting payments from the Borrower for other indebtedness, or foreclosing upon other security that is not securing a Loan covered under this Agreement, if the other loans or credits are in default, are separately stated on the books of the Lender, and the security or other collateral is segregated at all times.

(C) The Lender shall, if possible, provide the Department with advance notice of a change in the Department Rate with respect to a Loan, and shall in all cases provide such notice to the Department no later than the date on which the first payment affected by the rate change is delivered to the Department.

## **6.3 Lender's Late Payments to The Department:**

(A) If the Lender fails to make Prompt Payment to the Department for its pro rata share of any payment the Lender receives from, or on behalf of, the Borrower with respect to a Loan, the Lender shall pay the Department a late fee and/or interest as described in Section 1 (Prompt Payment) of this Agreement.

(B) If all or part of any payment made to the Lender is rescinded or must otherwise be returned to a Borrower for any reason (other than the Lender's negligence or misconduct), and if the Lender has, prior thereto, paid to the Department its pro rata share of such payment, the Lender shall, after telephone notice to the Department and confirmed later in writing, subtract the appropriate portion of such rescinded or returned payment from the Department's next payment hereunder.

**6.4 Application of Monies.** Except as provided in Section 6.7, all monies collected or received by the Lender in connection with any Loan (other than the fees) shall be applied and distributed in the following order of priority: (i) to the payment of all Servicing Expenses (if any); (ii) to the payment of accrued and unpaid interest on the Note; and (iii) to the payment of principal on the Note. Before any distribution to the Department, with respect to any such application being made, the amount thereof shall be adjusted to the extent that any amount is owed by either party to the other, in accordance with the terms hereof.

**6.5 Lender's Powers.** The Department authorizes the Lender, and the Lender hereby agrees, to act as trustee for the Department subject to the limitations contained herein, including the provisions of Sections 6.2(B), 6.6 and 6.7 hereof: (i) to negotiate, control, manage and service the Loan; (ii) to enforce or to refrain from enforcing the Loan Documents; (iii) to give consents, approvals or waivers in connection with the Loan Documents; (iv) to acquire additional security for the Loan; (v) to take or refrain from taking any action and make any determination provided for herein or in the Loan Documents; and (vi) to exercise all such powers as are incidental thereto. The Lender acknowledges its status as trustee and represents that it has the power to perform the services listed in this Section. In acting under this Agreement, the Lender agrees to exercise the same degree of care in administering each Loan as it would use in managing its own loans in which no Participation has been issued. The Lender agrees that the exercise of these fiduciary responsibilities as trustee for the Department includes the full and complete pursuit of amounts owed in relation to any unpaid portion of the entire Loan until released from that responsibility in writing by the Department, while the Department retains an undivided interest in the Loan and any related Loan Documents. Further, the Lender agrees that it will take no independent action, unless agreed to in advance and in writing by the Department, that directly, or indirectly by nature of a proceeding or process, releases the Borrower or any guarantor or other responsible party or entity, in full or in partial satisfaction, from a continuing responsibility to repay the Loan and/or other applicable charges/fees in relation to debt collection activities, until all amounts due are paid in full.

#### **6.6 Lender's Covenants with Respect to the Loans.**

(A) The Lender hereby covenants with respect to each Loan that it shall not, without the Department's prior written consent or approval:

- (i) consent to or accept any cancellation, termination, revision, or settlement of any Loan Document, or agree to any transfer or termination of any instrument now or hereafter assigned to it as security for the Loan;
- (ii) release, partially or fully, any collateral given as security for the Loan or any guarantor of the Loan;
- (iii) extend the maturity date of the Loan or the date of any interest or principal payment there under;
- (iv) reduce the amount of any payment of principal or the applicable Department Rate or the Lender Rate;
- (v) increase the maximum amount of the Loan or the obligations of the Lender or the Department pursuant to any Loan Document;

- (vi) require the acceptance of a new note evidencing the Loan, in substitution for the Note;
- (vii) waive or consent to the modification of any Loan Document that would cause the Loan to no longer be in compliance with the requirements of Section 3; or
- (viii) consent to any amendment or modification to a Loan Document that would be, in the judgment of a prudent financial manager, material to the Loan.

In the event that the Lender breaches any of the above enumerated covenants, it agrees that it shall purchase the Department's outstanding Participation as of the date of the breach.

(B) In the event that Lender seeks the Department's consent or approval for any of the matters enumerated above, the Department shall make every effort to respond to the Lender's request within twenty (20) business days after such request. Such response may be by telephone, to be confirmed in writing promptly thereafter. If the Department does not so respond, the Department shall be deemed to have rejected such request.

(C) Upon the occurrence of any default by the Borrower or guarantor under any of the Loan Documents, the Lender shall consult in good faith with the Department. Notwithstanding the foregoing, if such a default is caused by the nonpayment of principal or interest, by the bankruptcy of the Borrower or a guarantor, or by the occurrence of an event that would have a material adverse effect on the repayment of the Loan or the collateral securing the Loan (in the Lender's reasonable judgment), the Lender shall not waive such default without the written consent of the Department. If, at any time during the continued occurrence of such a default, the Department informs the Lender of its desire that the Lender commence foreclosure proceedings under the terms of the Loan Documents, the Lender shall either commence such proceedings or purchase the Department's Participation in accordance with Section 7 hereof.

**6.7 Subordination after Default.** The Lender and the Department may agree to the subordination of amounts (both principal and interest) owed to the Department under certain circumstances. Such subordination shall be effective only if noted on both the relevant Department Approval Letter and Participation Certificate. If the Lender and the Department so agree, the amounts owed by the Lender to the Department with respect to a Participation shall be subordinated to amounts owed by the Borrower to the Lender from and after the occurrence of all of the following events: (i) the occurrence of any default under any of the applicable Loan Documents; (ii) notice thereof to the Department; (iii) acceleration of the applicable Loan; and (iv) commencement and continuation of foreclosure proceedings and other collection efforts, which shall include enforcing all guaranties with respect thereto.

However, in any foreclosure proceeding where the Lender is the successful bidder at the foreclosure sale and the sale results in a loss to either the Lender and/or the Department, and the Lender subsequently sells the foreclosed property within twelve (12) months thereafter for a gain or profit, the Lender is obligated to remit a pro rata share of said gain or profit equal to the Department Participation Amount within thirty (30) calendar days thereafter. This also applies to any situation where the Lender takes judicial or non-judicial ownership of collateral assets for subsequent disposition.

Breach of any of the Covenants or requirements specified in Sections 6.5, 6.6, or 6.7 renders all subordination null and void as of the date of the breach. Unless a new subordination agreement is executed in writing by the Lender and the Department, any amounts recovered upon the Borrower's default are to be distributed on a pro rata basis equal to the Department Participation Amount, plus recovered interest and fees if any.

**6.8 Retention of Counsel.** In the event of actual or threatened litigation affecting a Loan or the security for such Loan, and if the Lender is of the opinion that the services of an attorney should be retained to protect those interests, the Lender may, following ten (10) business days' prior written notice to the Department (unless, in the judgment of the Lender, immediate action is required, whereupon any reasonable form of notice to the Department shall be acceptable), retain counsel to represent the Lender. The Lender shall seek to cause the Borrower to pay the reasonable fees and expenses of such counsel in accordance with the terms and conditions of the Loan Documents, but if the Borrower fails to pay such fees and expenses, then the Lender shall pay all reasonable costs thereof as Servicing Expenses. The Department shall not have any right in connection with such litigation to retain other counsel, except at the sole cost and expense of the Department.

## **7. REPURCHASE BY LENDER OF THE PARTICIPATION**

**7.1 Repurchase by Lender.** At any time during which the Loan is outstanding, the Lender shall have the unconditional right, within its sole and exclusive discretion, to repurchase the Participation in the Loan, upon written notice to the Department.

**7.2 Price Payable by the Lender.** The purchase price to be paid by the Lender to the Department under Sections 6.6(C) and 7.1 hereof shall be an amount equal to the Participation Amount, together with any accrued interest thereon and fees (if any).

**7.3 Consummation of Repurchase.** Any such repurchase shall occur on a date selected by the Lender, which date shall be no later than (a) ten (10) business days after the giving of written notice by the Lender of the exercise of its option to repurchase, or (b) twenty-five (25) business days after a request by the Department that the Lender begin foreclosure proceedings. The purchase price paid by the Lender to the Department shall be paid on such date in immediately available funds, and concurrently therewith the Department shall execute, and deliver to the Lender, document(s) reassigning to the Lender the Participation, without recourse, covenant or warranty, express or implied (except that the Department shall warrant its ownership of the Participation, the amount of indebtedness outstanding thereunder and its authority and capacity to execute such documents).

## **8. LENDER'S RIGHT OF OFFSET**

To the extent that at any time a Borrower, guarantor or any other party makes any payment under the relevant Loan Documents to the Lender by exercise of a right of offset of any kind, including any right applying to deposits, accounts, moneys or other property of such Borrower or guarantor deposited at or held by the Lender (but excluding any property securing the Loan pursuant to the Loan Documents), such payments shall be applied to reduce the Loan. Immediately thereafter, the Borrower's outstanding balance shall be automatically readjusted to reflect such payment, and the Lender shall purchase from the Department as much of the Participation Amount so as to return the Lender's and the Department's respective interests to the percentages existing prior to the offset.

## **9. SUBORDINATION OF THE DEPARTMENT'S PARTICIPATION TO SERVICING EXPENSES**

Subject to the terms and conditions of this Agreement, each Participation shall be subordinated in payment until such time as the Lender's Servicing Expenses (if any) with respect to the applicable Loan have been paid in full. Accordingly, and in consideration thereof, Servicing Expenses shall be the sole

responsibility of the Lender, and the Lender hereby indemnifies the Department for any and all liability for Servicing Expenses. In all other events, subject to the terms of this Agreement, payments made on the Participation shall be pari passu with amounts retained by the Lender with respect to the Borrower's outstanding balance, pro rata in accordance with their respective percentage interests.

Breach of any of the covenants or requirements herein or specified in Sections 6.5, 6.6, or 6.7 renders all subordination null and void as of the date of the breach. Unless a new subordination agreement is executed in writing by the Lender and the Department, any amounts recovered in connection with a Loan are to be distributed as a pro rata share equal to the Department Participation Amount plus recovered interest and fees if any.

## **10. BOOKKEEPING ENTRIES**

The Lender will reduce, for the purpose of recording the value of its assets in its financial books and records, the value of any Loan asset by the amount of the Department's Participation Amount. The Lender shall, within ten (10) business days after a request by the Department or US Treasury, allow the Department or US Treasury to examine the Lender's books and records concerning the Loan.

## **11. ACKNOWLEDGEMENTS AND AGREEMENTS BY THE PARTIES**

The Department and the Lender acknowledge and agree with respect to each Loan that:

(A) The Lender is expected to exercise due diligence in determining (i) the accuracy of any statement, warranty, representation or certification made by the Borrower and/or any guarantors in, or in connection with, any document relevant to the Loan, and (ii) the financial condition of the Borrower and any guarantor with respect to the Loan or the performance or observance of any obligations by the Borrower or any guarantor with respect to the Loan.

(B) The sale of a Participation does not constitute the sale of a "security" under or as defined in the Securities Act of 1933 and the Securities Exchange Act of 1934.

(C) The relationship between the Lender and the Department is and shall be that of a seller and purchaser of a property interest and not a debtor-creditor relationship. This Agreement is not intended to constitute, nor shall it be construed to establish, a partnership or joint venture between the Lender and the Department.

(D) The Department is relying upon the Lender to undertake, on behalf of the Department, the review and approval of the credit, collateral valuation, security documentation and determination of eligibility of the Borrower.

## **12. NOTICE OF EVENTS OF DEFAULT**

Upon the occurrence of a default or an Event of Default (as defined in the Loan Documents) or upon default in the payment of any principal of, or interest on, the Note or in the observance of the performance of any of the terms, covenants and conditions of any of the Loan Documents, the Lender shall, within ten (10) business days thereafter, notify the Department in writing of the existence and nature of the default.

## **13. INFORMATION**

The Lender shall promptly furnish to the Department an executed copy of the Loan Documents and copies of all such documents pertaining to the Loan, including, without limitation, periodic financial

information required to be delivered to the Lender which the Lender has in its possession from time to time.

#### **14. LENDER REPORTS**

Upon execution of this Agreement, the Lender shall prepare and deliver to the Department samples of all Loan Documents and a Lender report containing such information regarding the Lender as the Department shall request, and any other documentation as determined necessary by the Department or as otherwise identified in this Agreement.

#### **15. OTHER TRANSACTIONS BETWEEN THE LENDER AND THE BORROWER**

The Lender and its affiliates may accept deposits from, lend money to, extend other financial accommodations to, or for the benefit of, any Borrower, and may act as trustee under the indentures for, and generally engage in, any kind of business with any Borrower, any person who may do business with any Borrower, or any affiliate of any Borrower.

#### **16. CONFIDENTIALITY**

Except as may be required by law, including under the Freedom of Information Act, the Department will endeavor to maintain the confidentiality of all information furnished to the Department hereunder or in connection with any document relative to a Loan, except that the Department will have no obligation of confidentiality with respect to information that may be generally available to the public, or becomes generally available to the public through no fault of the Department. The sharing of information with or providing of information to another agency or authority of the State of Illinois by the Department shall not be deemed to violate this undertaking, provided that such agency or authority shall remain bound by the confidentiality provisions contained herein. The Department shall be authorized to publicize information regarding its interest in a Loan in which it has purchased a Participation, including, without limitation, information related to the name of the Borrower, the name of the Lender, the amount of the Loan and the amount of the Department Participation in the Loan. Notwithstanding anything set forth herein to the contrary, the Department shall be authorized to share with the US Treasury any information or any document related to the Program or a Loan thereunder, upon the request of the US Treasury. At times, the Department 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. The Department 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 the Department as a result of state or federal laws, rules and regulations.

#### **17. TERM OF AGREEMENT**

This Agreement shall terminate on March 31, 2017; provided, however, that it shall remain effective and its terms and conditions shall remain applicable to any Participation purchased during the time it was effective. If at any time the Department terminates the Program or wishes to discontinue accepting applications from Lender, the Department shall use its best efforts to provide Lender with at least thirty (30) days notice of the Program termination date or the date certain after which the Lender may not submit additional applications.

## 18. MISCELLANEOUS

**18.1 Assignment.** Neither the Department nor the Lender may, without the prior written consent of the other party, transfer or assign all or any portion of its rights and obligations hereunder, except that the Department may affect such a transfer or assignment to another agency or authority of the State of Illinois.

**18.2 Notices.** Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram, facsimile or telecopy; (c) overnight courier; or (d) registered or certified, first class mail, return receipt requested.

If to the Lender:                      Name of Lender: \_\_\_\_\_  
    Address: \_\_\_\_\_  
    City, State, Zip + four : \_\_\_\_\_  
    Attention: \_\_\_\_\_  
    Facsimile: \_\_\_\_\_

If to the Department:                      Illinois Department of Commerce and Economic Opportunity  
    500 East Monroe Street  
    Springfield, Illinois 62701-1615  
    Attention: Manager, Business Finance Division  
    Facsimile: (217) 558-4860

These addresses may be changed by notice to the other party given in the same manner as above provided. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and if sent pursuant to clause (d) shall be deemed received two (2) business days following deposit in the mail.

**18.3 Authorization.** The Lender and the Department each hereby represent to one another that: (a) any and all necessary corporate and other action has been taken to authorize the execution, and the performance of, its obligations under this Agreement; and (b) this Agreement is binding and enforceable against it.

**18.4 Applicable Law.** This Agreement shall be deemed a contract made under, and governed by, the laws of the State of Illinois, without regard to conflict of laws principles.

**18.5 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**18.6 Amendments, Changes, and Modifications.** This Agreement may be amended, changed, modified or altered, only by written agreement signed by the Lender and the Department (or their successors or assignees).

**18.7 Entire Agreement.** This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements and understandings relating to the subject matter hereof. No representation, promise, inducement or statement of intent has been made by either party that is not embodied in this Agreement, and neither party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not expressly set forth herein. This Agreement shall be binding upon, and shall inure to the benefit of, the Lender and the Department and (subject to the provisions of Section **18.1** hereof) their respective successors and assigns.

**18.8 Counterparts.** This Agreement may be executed in counterparts, all of which, when taken together, shall constitute one and the same Agreement.

**18.9 Conflict of Interest.** No director, officer or employee of the Lender shall participate in any decision relating to any Borrower's business that affects the director's, officer's or employee's personal interest or the interests of any corporation, partnership or association in which the director, officer or employee is directly interested. In extending credit to directors, officers or employees, not otherwise prohibited by this Agreement or federal law, the Lender is required to follow credit underwriting procedures that are as stringent as those applicable to comparable transactions by the Lender with persons that are not officers or employees of the Lender, not involving more than a normal risk of repayment.

**18.10 Records Retention.** The Lender agrees to maintain, for a minimum of five (5) years after the repayment, repurchase or other termination of the Department's Participation, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the Loan and Loan Documents. The Lender agrees that all books, records, and supporting documents related to the Loan and the Loan Documents shall be available for review and audit by the Illinois Auditor General and the Illinois Attorney General, and agrees to cooperate fully with any audit and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the Department for the recovery of any amounts paid by the Department pursuant to the Participation for which adequate books, records, and supporting documentation are not available to support their purported disbursement. The Lender further agrees that it will 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.

## 19. CERTIFICATIONS

**19.1 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.

**19.2 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.

**19.3 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.*).

**19.4 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.

**19.5 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.

**19.6 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.

**19.7 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 the Participation in such Loan/Project.

**19.8 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).

**19.9 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.

**19.10 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.

**19.11 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.

**19.12 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.*).

**19.13 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 the Department 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.

**19.14 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.*).

## **20. FEDERAL TAXPAYER IDENTIFICATION NUMBER, NAME AND LEGAL STATUS DISCLOSURE**

This organization does business under the legal name of: \_\_\_\_\_,  
which corresponds to the name of which the below listed FEIN is registered with the Internal Revenue Service.

Under penalties of perjury, the Lender certifies that \_\_\_\_\_ is its correct Federal Taxpayer Identification Number (FEIN). The organization 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<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<br>(select applicable tax classification) |
|   | _____ D-Disregarded Entity  |
|   | _____ C-Corporation   |
|   | _____ P-Partnership   |

**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 award of Participations under this Agreement is conditioned upon the above certification.

\_\_\_\_\_  
(Lender)

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

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

\_\_\_\_\_  
Printed Name

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

ILLINOIS DEPARTMENT OF  
COMMERCE AND ECONOMIC OPPORTUNITY

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

Director

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

EXHIBIT A

SAMPLE APPROVAL LETTER

Date \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State Zip Code+4 \_\_\_\_\_

**Re: Master Participation Agreement No. \_\_\_\_\_**

Dear \_\_\_\_\_:

The Illinois Department of Commerce and Economic Opportunity ("the Department") hereby agrees to purchase a \_\_\_\_\_ (\_\_\_\_\_% ) Participation interest in your loan to \_\_\_\_\_ for \$ \_\_\_\_\_ which is \_\_\_\_\_ percent (\_\_\_\_\_% ) of the total Project on the terms and conditions described in the loan application related to such Loan submitted by you to this Department. Among the terms applicable to this loan are the following:

1. Amount of Loan: \$ \_\_\_\_\_
2. Lender Portion: \$ \_\_\_\_\_ Lender Percentage \_\_\_\_\_ %
3. Department Portion: \$ \_\_\_\_\_ Department Percentage \_\_\_\_\_ %
4. Initial Lender Rate: \_\_\_\_\_
5. Initial Department Rate: \_\_\_\_\_ (Fixed/ Variable/ Adjustable)
6. Initial Note Rate: \_\_\_\_\_ Spread\* \_\_\_\_\_  
\*The difference between the initial Lender Rate and the initial Department Rate; this difference to be maintained in the event the initial Lender Rate changes between the date of this Approval Letter and the date of the Department's closing its Participation in the subject Loan.

7. Loan Terms:  
Lender Terms \_\_\_\_\_  
Department Terms Lender will advise the Department in writing prior to its loan closing, of any changes to the initial Lender Rate. This may require additional approvals being obtained from the Department.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Address of Borrower: \_\_\_\_\_

9. Payments to the Department (will/will not) be subordinate to the Lender in the event of default.

Name of Lender  
Date  
Page Two

This approval, and any subsequent funding of the Participation, is subject to the following contingencies:

1. Lender shall provide one Note evidencing the full amount of the Lender's Loan to include the Department's Portion. In no case will the Department term of obligation exceed the maturity date as shown on the Note.
2. At all times during which the Department owns a Participation interest in a Loan or until the Loan is paid in full, Lender shall continue to own and shall not assign or sell an interest equal to at least fifty percent (50%) of the total amount of the Loan. Additionally, the Department principal balance may never exceed the agreed upon Participation percentage of the Borrower's principal balance.
3. This purchase of a Participation in such Loan is made pursuant to and shall be governed by the Master Participation Agreement, dated \_\_\_\_\_, 201\_\_, by and between you and the Department (the "Master Participation Agreement"). All capitalized terms used in this Approval Letter not otherwise defined herein shall have the meanings ascribed to them in the Master Participation Agreement.

In accepting this Approval Letter, you are making the Representations/Warranties as specified in Section 3 of the above Master Participation Agreement and certifying/recertifying that; a) The loan is not being 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 you or to any affiliate of your institution, b) The Loan is not a refinancing of a Loan or Investment previously made to that Borrower by you or by any affiliate of yours, and c) you are not attempting to enroll any portion of an SBA-guaranteed loan. You are also recertifying 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)).

4. As per Section 3 of the Master Participation Agreement, the Department's obligations will cease immediately, notwithstanding this Approval Letter, without penalty of further payment being required, (a) if the Allocated Funds for the Program are no longer available (whether they have all been otherwise utilized or the Department no longer has access to them) or (b) in any fiscal year that the Illinois General Assembly fails to appropriate or otherwise make available sufficient funds.
5. This Approval Letter does not obligate the Department for an extension of credit beyond the Department terms as described above. It is mutually understood and agreed that this Approval Letter and/or the Master Participation Agreement represents the entire understanding between the Lender and the Department regarding the terms applicable to this Participation and that no oral representations or inducements regarding the terms applicable to this Participation that are not included or embodied in this letter and the agreement shall be of any force and effect.
6. Lender is notified that, in any instance where the length of the principal amortization schedule exceeds the number of years of the Loan term to which the Department is committing, thus obligating the Borrower to make a balloon payment at the end of the initial Loan term, the Department is under no obligation, whatsoever, to participate in any financing of said balloon for any future term.
7. 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 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.

Name of Lender  
Date  
Page Three

8. After the Lender closes the Loan it must provide an original Participation Certificate (Exhibit B of the Master Participation Agreement) and copies of the Lender's executed Loan Documents as described in Section 1(A) of the Master Participation Agreement within ten (10) business days of closing.
9. The Lender, upon receipt of the Department funds, shall complete the Lender's Receipt of the Department Funds and Confirmation of Deposit to Borrower (Exhibit D) and return it to the Department at the same address as set forth in paragraph ten below.
10. Payments will be made by check and forwarded to the Department at 500 East Monroe Street, Accounting Office, Springfield, Illinois 62701-1615. Please include with each payment the Monthly Report/ Payment Distribution Summary and Transmittal (Exhibit D) showing the receipt of the payment and the details of how the total payment was distributed. Additional matters affecting that status or quality of the credit will similarly be reported in the "Notes" section of Exhibit D. (sample Exhibit D attached)
11. **The Loan must close within one hundred twenty (120) days of this Approval Letter, unless a written extension of time is granted by the Department, otherwise this Approval Letter will expire.**

This will confirm your acceptance of these conditions. **Pursuant to the Master Participation Agreement, this approval letter will expire thirty (30) days from the date of this letter, unless a written extension is granted.** Please sign, date and return this original approval letter to:

\_\_\_\_\_(Loan Officer)  
Illinois Department of Commerce and Economic Opportunity  
Business Finance Division  
500 East Monroe Street, 4th Floor  
Springfield, Illinois 62701-1615

The staff of the Department of Commerce and Economic Opportunity looks forward to working with you. If you have any questions, please feel free to contact \_\_\_\_\_ (Loan Officer) at \_\_\_\_\_ (phone).

ILLINOIS DEPARTMENT OF  
COMMERCE AND ECONOMIC OPPORTUNITY

By: \_\_\_\_\_  
Chairperson  
Financial Review Committee

\_\_\_\_\_  
(Lender)

\_\_\_\_\_  
Printed Name

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

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

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

Enclosures

EXHIBIT B

PARTICIPATION CERTIFICATE

The undersigned lender (the "Lender") and the Illinois Department of Commerce and Economic Opportunity ("The Department") have entered into a **Master Participation Agreement Number #\_\_\_\_\_ dated \_\_\_\_\_, 201\_\_** (the "Master Agreement") pursuant to which such parties have agreed that the Department from time to time may purchase from the Lender, Participations in loans made by the Lender. This Participation Certificate shall acknowledge the purchase of such a participation (the "Participation") in a loan (the "Loan") of the Lender to \_\_\_\_\_ (the "Borrower") pursuant to the terms and conditions of that certain Department Approval Letter dated \_\_\_\_\_, 201\_\_ (the "Approval Letter"). The Loan was made on \_\_\_\_\_, 20\_\_\_\_ on the terms and conditions described in the Approval Letter and those contained in the application related to the Loan submitted by the Lender to the Department. **(The Department has agreed to the subordination of payments in certain situations pursuant to Section 6.7 of the Master Agreement. OR the Department will not subordinate payments in certain situations pursuant to Section 6.7 of the Master Agreement.)\***

The Lender represents to the Department (a) that the Loan has been made on the terms and conditions described in the related application submitted to the Department, (b) that it has provided to the Department copies of the promissory note and all other documentation required by Section 2 of the Master Agreement, and such copies are true and correct as of the date hereof. This Participation shall be governed by all of the terms and conditions contained in the Master Agreement and the Approval Letter.

\_\_\_\_\_  
(LENDER)

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

\_\_\_\_\_  
Printed Name

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

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

Acknowledged:

ILLINOIS DEPARTMENT OF  
COMMERCE AND ECONOMIC OPPORTUNITY

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

Director

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

EXHIBIT C

APPLICANT'S CERTIFICATION

The undersigned acknowledges that a participation interest (the "Participation") in the loan (the "Loan") for which it has applied from \_\_\_\_\_ (the "Lender") may be sold to the Illinois Department of Commerce and Economic Opportunity ("the Department") pursuant to the federal State Small Business Credit Initiative ("SSBCI") of the Small Business Jobs Act of 2010 (Title III of Public Law 111-240); the Allocation Agreement dated July 26, 2011 between the United States Department of the 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 (30 ILCS 605/605-1 *et seq.*). The Lender will continue to handle and service the entire Loan and all payments will be made to the Lender. In order to induce the Department to purchase a Participation in the Loan, the undersigned agrees and certifies to the Lender and the Department as follows:

1. The project of the undersigned for which Loan funds are to be used (the "Project") would not be undertaken unless the Loan is provided or the Director of the Department determines that it is in the best interests of the State of Illinois' economy to provide the Loan.
2. The purchase of the Participation will cause a Project to be undertaken in Illinois which has the potential to create or retain substantial employment or to modernize or improve the competitiveness of the undersigned in relation to the amount of the Loan.
3. The Project is a new plant start-up, modernization, expansion or a new venture opportunity in Illinois and is not a relocation of an existing business from another site within the State of Illinois unless that relocation results in substantial employment growth.
4. The undersigned is ready to implement the Project and has the financial ability to carry out the Project.
5. The undersigned is a credit disadvantaged firm, such as a business start-up or micro-enterprise or other young firm, or an industrial expansion, modernization, environmental upgrade or other mature firm.
6. The undersigned 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.
7. The undersigned 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 (CDFI);

(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);

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

(f) 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.

8. The undersigned 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.

9. As required by Section 3011(c)(2) of the Small Business Jobs Act of 2010, that no principal of the undersigned 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 undersigned, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the undersigned.

10. The undersigned agrees to submit annual Job Reports to the Department upon request.

11. The proceeds of the Loan 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.

Proceeds of the Loan will not be used:

(a) to repay delinquent federal or state income taxes unless the undersigned 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 undersigned's continuance; or

(d) to purchase any portion of any ownership interest of any owner in the undersigned.

12. Under penalties of perjury, the undersigned certifies that 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<br>(select applicable tax classification) |
- \_\_\_\_\_ D-Disregarded Entity  
\_\_\_\_\_ C-Corporation  
\_\_\_\_\_ P-Partnership

13. The undersigned certifies 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 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 Participation is less than \$5,000, the Drug Free Workplace Act is not applicable to the Participation.

14. The undersigned certifies that it shall comply with all applicable provisions of Federal, State and local law in the performance of its obligations pursuant to the line of credit.

15. The undersigned certifies that entering into the line of credit 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.

16. The undersigned 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.*).

17. The undersigned 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 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 undersigned enters into an installment payment agreement with said tax authority and remains in good standing therewith. The undersigned acknowledges and agrees it is required to tender a copy of any such installment payment agreement to the Department. The undersigned acknowledges and agrees that it may not utilize loan funds to discharge outstanding tax liabilities or other debts owed to any governmental unit. The undersigned 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.

18. The undersigned 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.

19. The undersigned 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.

20. The undersigned 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 undersigned 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.

21. The undersigned 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).

22. The undersigned 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 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.

23. The undersigned 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 undersigned further certifies that all facilities utilized by it in the performance of this Agreement comply with State accessibility laws.

24. The undersigned 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.

25. The Department 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 the Department in the Loan. Notwithstanding the foregoing, the Department is committed to protecting the privacy of its vendors, grantees and beneficiaries of programs and services. At times, the Department 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. The Department 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 the Department as a result of state or federal laws, rules and regulations.

26. The undersigned certifies 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.*).

THIS SECTION TO BE COMPLETED BY AN APPLICANT RECEIVING A LOAN BASED ON MINORITY, FEMALE, DISABLED OR VETERAN OWNED BUSINESS STATUS. This information is for the Department's use only.

27. The undersigned certifies that the applicant qualifies for this Loan based on 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 undersigned acknowledges and agrees that the certifications made herein shall be considered representations made pursuant to the Loan Agreement related to the Loan with the same ramifications in the event they are inaccurate.

This Certification is executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_  
PRINT/TYPE NAME OF APPLICANT

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

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

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



DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY  
LENDER'S APPLICATION FOR PARTICIPATION

Lender \_\_\_\_\_ Contact \_\_\_\_\_ Title \_\_\_\_\_

Address \_\_\_\_\_ FEIN# \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Telephone \_\_\_\_\_ E-Mail \_\_\_\_\_

Applicant \_\_\_\_\_

We request Approval for:  Loan Participation  Minority, Female, Disabled, Veteran Participation

Amount of Loan: \_\_\_\_\_ Lender Share: \_\_\_\_\_ Loan Principal Payments per Month: \_\_\_\_\_ Beginning: \_\_\_\_\_  
\$ \_\_\_\_\_ \$ \_\_\_\_\_ % \$ \_\_\_\_\_ Per Month \_\_\_\_\_ months after closing

Months \_\_\_\_\_ Department Share: \_\_\_\_\_ Lender's Rate: \_\_\_\_\_ Note Interest Rate: \_\_\_\_\_  
\$ \_\_\_\_\_ % \_\_\_\_\_ % Per Annum \_\_\_\_\_ %

**The following must be completed and submitted:**

1. Lender's Application for Participation.
2. Applicant's Project Proposal and Applicant's Certification.
3. Lender's Internal Loan Report to include:
  - a. Financial, Profitability and Repayment Analysis, including ratios, trends, and Industry Standards (e.g.: RMA Comparables)
  - b. Assessment of applicant's Management Skill and Business Plan.
  - c. Collateral Analysis, including lien position and adequacy.
  - d. Lender's experience with the applicant, including Strengths and Weaknesses.
  - e. Explain the need for State Assistance.
4. Applicant's Historical Balance Sheets and Income Statements for three years, a Current Interim Statement, and Projected Income Statements for the first three years.
5. Applicant's Credit Report(s).

**LENDER'S CERTIFICATION**

I certify to the Department that the loan represented by this application is approved subject to terms specified. Without the Department's participation, as requested, we would not be willing to make this loan, and in our opinion the financial assistance requested is not otherwise available on reasonable terms. I have reviewed and verified the information in the Applicant's Project Proposal, Applicant's Certification and the documentation supporting this application. I certify, to the extent of my knowledge, that the applicant is a for-profit small business (for the purposes of this program), the proceeds will be used for an eligible purpose in Illinois and the owners and managers of the applicant business are of good character.

In submitting this Application for Participation, I hereby restate the Representations/Warranties as specified in Section 3 of the Department of Commerce and Economic Opportunity Master Participation Agreement, and certify/recertify that; a. The loan is not being 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 us or to any affiliate of our institution, b) The Loan is not a refinancing of a Loan or Investment previously made to that Borrower by us or by any affiliate of ours, and c) we are not attempting to enroll any portion of an SBA-guaranteed loan. We also recertify 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)).

- Certifying Lender Signature-

-Title -

- Date -

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY  
**APPLICANT'S PROJECT PROPOSAL**

Name of Applicant \_\_\_\_\_ Contact \_\_\_\_\_ Title \_\_\_\_\_  
 Address \_\_\_\_\_ Telephone \_\_\_\_\_ E-Mail \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ FEIN/Tax ID \_\_\_\_\_ Unemploy. Ins. No \_\_\_\_\_  
 Project Address \_\_\_\_\_ County \_\_\_\_\_ NAICS Code \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Duns Number \_\_\_\_\_  
 Requested Loan                  Equity                          Other                                  Other                                  Total Project Cost  
 \$    \$    \$    \$    \$    -

COMPLETE THE FOLLOWING (attach a separate page if necessary):

Briefly Describe The Project:

How will these loan funds be used?

Employment Impact: Describe your businesses employment (e.g. number, type, full & part time) now and after this project has been implemented.

How will this project modernize your business or improve its competitiveness?

T  F  Wetlands will not be impacted because the use (s) of the Department funding is limited to repair, maintenance and/or renovation of existing buildings, facilities, lawns and ornamental plantings; purchase of machinery and equipment; and/or working capital financing.

Y  N  There is the potential for a wetland impact to occur because the uses(s) of the Department funding includes new construction or expansion of existing buildings or facilities or other alterations to the "footprint" of the facilities on the property. A plat map of the site is included with this application, so that the Department staff can compare the property's location against the National Wetlands Inventory (NWI) to identify wetlands located on or within 250 feet of the property.

MINORITY, FEMALE, DISABLED and VETERAN PARTICIPATIONS ONLY: Provide the following for all owners/managers.

Name and Address	Title	% Ownership	SSN	Race/Gender/Disability/Veteran
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

I/We certify to the Lender and the Department that the statements made in this Applicant's Project Proposal, the Applicant's Certification and the documents submitted to the Lender are true, may be relied upon in considering this loan, and may be verified in any manner deemed appropriate, including the Illinois Department of Employment Security, Consumer Credit Bureau Services, business reporting services and criminal history record check. The applicant(s) authorize the Lender and the Department to release the information on this page (excluding % ownership, SSN and Race/Gender/Disability) in announcements, press releases and other public information documents. I/We acknowledge and agree that the Department is committed to protecting the privacy of its vendors, grantees and beneficiaries of programs and services. At times, the Department 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. The Department also collects confidential information for oversight and monitoring purposes. Furnishing personal identity information, such as a 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 the Department as a result of state or federal laws, rules and regulations.

- Applicant's Signature(s) -    - Title -    - Date -