

CAPITAL ACCESS LOAN PROGRAM PARTICIPATION AGREEMENT

This CAPITAL ACCESS LOAN PROGRAM PARTICIPATION AGREEMENT (the “**Agreement**”) is made effective as of _____, by and between the Ohio Department of Development (the “**Department**”) and _____ (“**Lender**”).

RECITALS

A. The Capital Access Loan Program (the “**Program**”) is authorized by sections 122.60 through 122.605 of the Ohio Revised Code to assist participating financial institutions in making loans to certain businesses that face barriers in accessing working capital and obtaining fixed asset financing.

B. Lender desires to participate in the Program, and the Department has determined that Lender is eligible to participate in the Program on the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration the sufficiency and receipt of which is acknowledged, the parties agree as follows:

ARTICLE 1: DEFINITIONS

1.1 Agreement Definitions. As used in this Agreement, the following terms shall have the meanings set forth below, unless the context clearly indicates otherwise:

“Act” means Ohio Revised Code sections 122.60 through 122.605, inclusive, as from time to time amended.

“Borrower” means an Eligible Business that has received a capital access loan from Lender, which is being, has been, or will be enrolled by the Lender in the Program subject to the requirements of the Act and this Agreement.

“Business Day” means any day of the year other than a Saturday, Sunday or any day on which the State of Ohio or any participating Financial Institution is authorized or required by law to close.

“Claim” means any claim filed by the Lender pursuant to Section 5.2 of this Agreement.

“Department” means the Ohio Department of Development or its successor agency.

“Director” means the Director of the Ohio Department of Development or its successor agency.

“Eligible Business” has the meaning given that term in the Act. For convenience of reference, as of the date of this Agreement, the Act defines “Eligible Business” as follows: a for-profit business entity, or a nonprofit entity, that had total annual sales in its most recently completed fiscal year of less than ten million dollars and that has a principal place of for-profit business or nonprofit entity activity within the state, the operation of which, alone or in conjunction with other facilities, will create new jobs or preserve existing jobs and employment opportunities and will improve the economic welfare of the people of the state. As used in the Act, “new jobs” does not include existing jobs transferred from another facility within the state, and “existing jobs” means only existing jobs at facilities within the same municipal corporation or township in which the project, activity, or enterprise that is the subject of a capital access loan is located.

“Eligible Use of Proceeds” means loans for Working Capital or for the purchase of Fixed Assets, but shall not include loans made for any project or development related to the on-site construction or purchase of residential housing or to finance passive real estate ownership.

“Enrolled Loan” means a capital access loan enrolled in the Program by the Department in accordance with the terms of Article 4 of this Agreement.

“Financial Institution” has the meaning given that term in the Act.

“Fixed Assets” means tangible personal and real property used by the Borrower in the operation of its business, but not expected to be consumed or converted into cash in the ordinary course of events.

“Fund” means the Capital Access Loan Program fund created by section 122.601 of the Revised Code.

“Lender” means a financial institution identified in the preamble to this Agreement, its successors and permitted assigns.

“Passive real estate ownership” has the meaning given that term in the Act.. For convenience of reference, as of the date of this Agreement, the Act defines “Passive real estate ownership” as follows: the ownership of real estate for the sole purpose of deriving income from it by speculation, trade, or rental.

“Prior Debt” means debt that is not covered by the Program and that is owed or was previously owed by an Eligible Business to Lender at the time a capital access loan is to be made by Lender to such Eligible Business.

“Program Reserve Account” has the meaning given that term in the Act. For convenience of reference, as of the date of this Agreement, the Act defines “Program reserve account” as follows: a dedicated account at each participating financial institution that is the property of the state and may be used by the participating financial institution only for the purpose of recovering a claim under section 122.604 of the Revised Code arising from a default on a loan made by the participating financial institution under the Program. If Lender participated in the Program under a prior Capital Access Loan Program agreement with the Department, the Program Reserve Account shall be the same Program Reserve Account as established under such prior agreement.

“Program” means the Capital Access Loan Program created by section 122.602 of the Revised Code.

“Reserve Account Contribution” means the amounts described in Section 5.1 of this Agreement to be contributed to the Program Reserve Account in connection with an Enrolled Loan.

“Working Capital” means funds used by a Borrower to finance its business operations and which are generally not secured by Fixed Assets.

1.2 *Statutory Definitions.* In the event any definition set forth in Section 1.1 is changed by any amendment to the Act, such definition shall be deemed to be amended to conform to the Act and no action of the parties shall be necessary to effect the conforming change.

ARTICLE 2: LENDER ELIGIBILITY, REPRESENTATIONS AND COVENANTS

2.1 *Lender Eligibility.* Upon the execution and delivery of this Agreement by each of Lender and the Department, Lender shall be eligible to participate in the Program, to make capital access loans to Eligible Businesses as contemplated by the Act, and to receive payments from the Fund for deposit into a Program Reserve Account for payment of claims made pursuant to the Act and this Agreement.

2.2 *Lender Representations.* Lender represents and warrants to the Department as of the date of this Agreement, and by requesting enrollment of any capital access loan in the Program Lender represents and warrants to the Department as of the date of such request, that:

(a) Lender is a Financial Institution, as that term is defined in the Act, and Lender has all requisite power to authorize, execute and deliver this Agreement and to participate in the Program.

(b) The execution and performance of this Agreement by Lender and Lender's participation in the Program has been duly authorized by proper action of Lender and will not violate or conflict with any agreement, instrument by which the Lender is bound.

(c) To the best of its knowledge, Lender is in compliance with all federal, state, and local laws, rules, and regulations to which Lender is subject and there are no regulatory, enforcement or other actions, suits or proceedings pending or threatened against Lender which, if adversely determined, would individually or in the aggregate impair the ability of Lender to participate in the Program or perform its obligations under this Agreement.

(d) The individual executing this Agreement on behalf of Lender has been duly authorized and empowered to obligate Lender to the terms of this Agreement.

2.3 Lender Covenants. Lender covenants and agrees during the term of this Agreement as follows:

(a) Within the context of the objectives of the Program, Lender will exercise reasonable care and diligence in making and collection of loans enrolled in the Program.

(b) Lender will comply with all federal, state, and local laws, rules, and regulations to which Lender is subject, including, without limitation, the requirements of the Act and the requirements of Chapter 135 of the Revised Code to provide security for the repayment of all public moneys to be deposited in the Program Reserve Account.

(c) All capital access loans submitted by Lender to the Department for enrollment in the Program shall be valid, binding and enforceable obligations of the Borrowers. Lender shall document capital access loans in a legally sound manner, which may include a loan agreement containing a confession of judgment, a promissory note containing a cognovit provision and confession of judgment, and security documents such as a mortgage or security agreement and properly filed Uniform Commercial Code financing statements, as the Lender deems appropriate and necessary to support the enforcement and collection of the loan obligation.

(d) Prior to submission of a claim to the Department for payment from the Program Reserve Account, Lender shall take all reasonable and prudent steps to exhaust all of its rights and legal remedies to collect an Enrolled Loan, including, but not limited to, obtaining a judgment, foreclosure or repossession of collateral, enforcement of corporate and/or personal guarantees, and exercise of set-off rights.

ARTICLE 3: PROGRAM RESERVE ACCOUNT

3.1 Program Reserve Account. Prior to enrollment of the first capital access loan with Lender, the Department shall open with Lender an interest-bearing account which will serve as the Program Reserve Account. The Program Reserve Account will be held in the name of the Director for the purpose of receiving all Reserve Account Contributions to be paid by Lender and the Borrower, the transfers made by the Department pursuant to the terms of Section 4.3 of this Agreement, and any interest earned on amounts held in the Program Reserve Account from time to time. Lender shall provide the Department with the account number of the Program Reserve Account and any and all wiring instructions for the Program Reserve Account for all transfers of money. In addition, the Program Reserve Account shall contain only those moneys deposited into it under the Program and the interest payable on the moneys in the Program Reserve Account.

3.2 Control and Investment of Program Reserve Account. The Program Reserve Account shall be the exclusive property of, and controlled solely by, the Director. The Program Reserve Account may only be used by Lender for the purpose of recovering a Claim after approval by the Director.

3.3 Interest Earned in the Program Reserve Account. The Program Reserve Account shall be invested in a manner consistent with Ohio law and approved by the Director. Interest earned on funds held in the Program Reserve Account shall be deemed to be part of the Program Reserve Account held as an additional Program loss reserve. Not more than twice in any state fiscal year (July 1 through June 30), the Director may require Lender to release from the Program Reserve Account and pay to the Department for deposit into the Fund any or all accrued interest then held in the Program Reserve Account.

3.4 Monthly Program Reserve Account Statements. Lender shall provide to the Department a monthly statement for the Program Reserve Account. The monthly statement shall include the account balance, an itemized list of payments into the Program Reserve Account for the period covered by the statement, and the interest earned in the Program Reserve Account for the period covered by the statement. The monthly statement shall be delivered to the Department within thirty (30) days after the end of each month.

3.5 Withdrawals from the Program Reserve Account. The Director shall not withdraw funds from the Program Reserve Account except as provided for in the Act and this Agreement. The Director may withdraw funds from the Program Reserve Account (a) in accordance with Section 122.603(E) of the Revised Code when the balance of the Program Reserve Account exceeds thirty-three percent (33%) of Lender's capital access loans then outstanding; and (b) in accordance with Section 122.603(F) of the Revised Code when Lender (i) is no longer eligible to participate in the Program, (ii) this Agreement expires and is not replaced, (iii) Lender has no capital access loans outstanding, or (iv) Lender has not made a capital access loan within the preceding twenty-four (24) months. Lender may withdraw funds from the Program Reserve Account only (1) to refund Reserve Account Contributions in respect of a loan if, pursuant to Section 4.3 of this Agreement, the Director determines that such loan does not satisfy the eligibility criteria for enrollment, and (2) in respect of a Claim approved by the Director as provided in Section 5.2 of this Agreement.

ARTICLE 4: ENROLLMENT OF LOANS IN PROGRAM

4.1 Interest Rates and Fees. Subject to the requirements of Section 122.602 of the Revised Code and Section 5.1 of this Agreement, a capital access loan to be enrolled in the Program may be made with such interest rate, fees, and other terms and conditions as Lender and a Borrower may agree. The capital access loan may be in the form of a fixed amount disbursed in full or a line of credit, in which case the amount of the loan amount shall be considered to be the maximum amount that can be drawn down against the line of credit.

4.2 Procedure for Enrollment in Program. In order to enroll a capital access loan in the Program, Lender shall deliver to the Department a completed Capital Access Loan Enrollment Form within fifteen (15) Business Days after the earlier of the date Lender first disburses the proceeds of the capital access loan to the Borrower or, for a line of credit, the date on which Lender has obligated itself to disburse the proceeds of the loan. Lender's submission of a Capital Access Loan Enrollment Form shall constitute Lender's certification that the capital access loan for which enrollment is requested satisfies the Program requirements of the Act. Lender explicitly acknowledges that the Department is under no obligation to accept such loan into the Program and such loan is not an Enrolled Loan until Lender receives an acknowledgement of enrollment from the Director.

4.3 Acknowledgement of Enrollment and Transfer of Moneys. Within ten (10) Business Days after receipt by the Department of a Capital Access Loan Enrollment Form, the Director shall determine whether or not the loan meets all of the criteria set forth in Section 122.602(D) of the Revised Code. If the Director determines that the loan meets all of the criteria set forth in Section 122.602(D) of the Revised Code, the

Director shall deliver to Lender an acknowledgement of enrollment which shall specify the amount to be disbursed by the Director into the Program Reserve Account. Pursuant to Section 122.603(D) of the Revised Code, the Director shall disburse in respect of the first three (3) capital access loans enrolled by Lender in the Program an amount equal to fifty percent (50%) of the principal amount of each of such loan, and the Director shall disburse in respect of each additional capital access loan enrolled by Lender in the Program an amount equal to ten percent (10%) of the principal amount of each such loan; provided, however, if a capital access loan is made to an Ohio certified minority business enterprise, then the amount disbursed by the Director in respect of such loan shall be an amount equal to eighty percent (80%) of the principal amount of such loan in lieu of the percentage otherwise set forth in this section. Such disbursement shall be made promptly after the Director's approval of enrollment. For a Lender continuing in the Program, the number of loans made for purposes of this section shall include the number of loans made under any prior Capital Access Loan Program agreement. If the Director determines that a loan does not satisfy the criteria for enrollment in the Program, the Director shall notify Lender, and Lender shall remove any Reserve Account Contributions collected by Lender in respect of such loan from the Program Reserve Account. Such Reserve Account Contributions shall be refunded or applied as Lender and the affected Borrower agree.

4.4 Enrolling Capital Access Loans that Refinance Debt.

(a) Loans Made by Lender. As provided in Section 122.602(I) of the Revised Code, if Lender makes a capital access loan to a Borrower that refinances an existing non-Program loan made by Lender, only the amount in excess of the Prior Debt shall be eligible to be enrolled in the Program. Reserve Account Contributions shall be calculated on the amount of the capital access loan in excess of the Prior Debt. The capital access loan must satisfy all other Program criteria to be enrolled in the Program.

(b) Loans Originally Made by Another Financial Institution. Lender may submit for enrollment in the Program a capital access loan made for the purpose of refinancing debt owed to another financial institution. Such capital access loan must satisfy all other Program criteria to be enrolled in the Program.

(c) Refinancing of Enrolled Loans. Lender may refinance an Enrolled Loan on terms and conditions agreed by Lender and Borrower, and the refinanced loan will continue to qualify as an Enrolled Loan provided the refinanced loan satisfies the Program criteria. No additional fees shall be due from Lender or Borrower and no additional disbursement shall be made by the Director to the Program Reserve Account except to the extent the principal amount of the refinanced loan exceeds the amount refinanced.

4.5 Lines of Credit.

(a) If an Enrolled Loan is a line of credit then during the term of this Agreement, the line of credit may continue as an Enrolled Loan for up to thirty-six (36) months after the loan is made to Borrower. Extensions of the line of credit within such thirty-six month (36) period will not require separate applications for enrollment or payment of additional Reserve Account Contributions. If a line of credit is extended by a Lender for more than thirty-six (36) months, such extension shall be considered a new loan for which an application for enrollment and payment of Reserve Account Contributions will be required.

(b) For the purposes of this Agreement, fluctuations in the outstanding balance of a line of credit that has been enrolled in the Program as an Enrolled Loan shall not be deemed to be a refinancing of an Enrolled Loan.

ARTICLE 5: RESERVE ACCOUNT CONTRIBUTIONS AND CLAIMS

5.1 Reserve Account Contributions. The Reserve Account Contribution for each Enrolled Loan shall be an amount not less than three percent (3%) nor more than six percent (6%) of the principal amount of the Enrolled Loan. The Reserve Account Contribution includes both the Program reserve fee required by the Act to be paid by Borrower and the deposit to be made by Lender into the Program Reserve Account.

Lender shall set the Program reserve fee payable by Borrower, and such fee shall be an amount not less than one and one-half percent (1-1/2 %) nor more than three percent (3%) of the principal amount of the capital access loan. Lender shall deposit into the Program Reserve Account an amount equal to the Program reserve fee it charges to the Borrower. As provided in Section 122.603(B) of the Revised Code, Lender may recover all or part of the amount of Lender's deposit from the Borrower on such terms as Lender and the Borrower agree.

5.2 Lender Claim Against the Program Reserve Account.

(a) Submission of Claim. Prior to submitting any claim against the Program Reserve Account, Lender shall undertake to collect accounts as further described in Section 2.3(d) of this Agreement. If Lender determines in a commercially reasonable manner and consistent with the Lender's normal practice for managing its commercial loans that all or any portion of an Enrolled Loan is uncollectible, Lender may submit a Claim to the Department for a release of the moneys in the Program Reserve Account. The Claim must be submitted to the Department within sixty (60) days of the date Lender determines the Loan is uncollectible. All Claims shall be submitted in the form then required by the Department. Lender may not submit more than one Claim for any Enrolled Loan.

(b) Amount of Claim. Lender's Claim may include the amount of principal plus accrued interest owed on the Enrolled Loan. The amount of principal included in the Claim may not exceed the principal amount covered by the Program. The amount of the accrued interest included in the Claim may not exceed the accrued interest attributable to the covered principal of the Enrolled Loan. The amount of any delinquency stated in a Claim shall be determined by Lender in the same manner as for any similar non-Program loan.

(c) Allocation of Program Reserve Account Among Multiple Claims. If Lender files two or more Claims at the same time or substantially the same time and there are then insufficient funds in the Program Reserve Account at that time to cover the entire amount of the Claims, Lender may specify an order of priority in which the Department shall approve the release of the moneys in the Program Reserve Account in relation to the Claims.

(d) Withdrawal from Program Reserve Account. Promptly after receipt of a Claim, the Department shall review the Claim. Lender shall provide such supporting documentation for the Claim as the Department may request. The Director shall notify Lender in writing of his determination to approve or deny any Claim. An approval shall authorize Lender to withdraw from the Program Reserve Account the approved amount of the Claim. Any denial shall state in reasonable detail the reason for the denial. Lender shall not make any withdrawal from the Program Reserve Account prior to its receipt of the Director's written approval.

(e) Limitation of Claim Recovery. No Claim shall be made for an amount that exceeds then-current balance of the Program Reserve Account. Lender shall have no right to receive or claim from the Director, the Department or the State of Ohio any amount in excess of the balance of the Program Reserve Account.

(f) Recovery by Lender Subsequent to Claim. If subsequent to payment of a Claim Lender recovers from a Borrower any amount for which payment of the Claim was made, Lender shall promptly pay to the Program Reserve Account an amount equal to the amount recovered from the Borrower, less any reasonable expenses incurred by Lender in the normal course of such collection activity.

5.3 Subrogation. The Director shall be subrogated to the rights of Lender in collateral, personal guarantees, and all other forms of security for the Enrolled Loan that have not been realized by Lender under the following circumstances: (a) Lender's losses have been fully or partially covered by payment of a Claim or by a combination of payment of a Claim and recovery from the Borrower, liquidation of collateral, or from other sources; and (b) Lender has stated to the Director that Lender will not take action on any remaining available sources of collateral or other security or sources for recovery. The Director may, but shall not be obligated to, take action to recover the amount of any Claim from such remaining sources of

collateral or other security or sources for recovery. Thereafter, at the request of the Director, Lender shall execute an Assignment Agreement that assigns to the Director any and all right, title or interest to any collateral, security, or other right of recovery in connection with the Enrolled Loan. The Assignment Agreement shall be in form and substance acceptable to the Director and his counsel. If such assignment has been made, the Director shall not be required to undertake any obligations of Lender pursuant to its loan documents, except for any obligations directly related to the exercise by the Director of the assigned rights of recovery in connection with the Enrolled Loan. Lender agrees that it will fulfill any other obligations it may have under the loan documents in the same manner and to the same degree as required had the assignment not been made. Lender shall provide the Director with all reasonable assistance after assignment as the Director may request in proceeding with respect to any such collateral, security or other right of recovery, except that such reasonable assistance shall not require Lender to incur any out-of-pocket expenses. Any funds received by the Director as a result of enforcement actions taken with respect to any such collateral, security or other right of recovery shall be deposited by the Department into the Fund.

5.4 *Collateral*. Except upon the exercise of the Director's right of subrogation as set forth in Section 5.3 of this Agreement, neither the Director nor the State of Ohio shall have any legal or equitable interest in any collateral, security, or other right of recovery in connection with any Enrolled Loan in the Program, and therefore, the Department's consent is not necessary for any amendment to the Lender's loan documents.

ARTICLE 6: REPORTING REQUIREMENT

6.1 *Annual Report*. Lender shall submit an annual report to the Department on or before March 31 of each year. The Annual Report shall be in the form and format required by the Department from time to time and shall include all of the following:

- (a) Information regarding the status of each of Lender's outstanding Enrolled Loans and any losses incurred by Lender on the Enrolled Loans during the period covered by the Annual Report;
- (b) A statement of the total amount of Enrolled Loans for which the Department has made a contribution from the Fund under the Program; and
- (c) A copy of Lender's most recent financial statements.

6.2 *Quarterly Report*. Lender shall submit on or before February 15, May 15, August 15, and November 15, of each year during which any Enrolled Loan remains outstanding a report to the Department setting forth the number and outstanding balance of all Enrolled Loans as of the last day of the prior calendar quarter. The Quarterly Report shall be in the form and format required by the Department from time to time.

ARTICLE 7: TERM, TERMINATION AND EFFECT OF TERMINATION

7.1 *Term*. This Agreement shall continue for a period of twenty-four (24) months after the effective date first set forth above unless terminated in accordance with the provision of this Article 7. Thereafter, this Agreement shall continue for consecutive twelve- (12-) month terms unless at least thirty (30) days prior to the scheduled expiration date, either the Director or Lender notifies the other in writing of its intention not to renew.

7.2 *Continued Participation in the Program*. If Lender participated in the Program pursuant to a prior Capital Access Loan Program agreement with the Department, this Agreement continues Lender's participation in the Program subject to certain new Program terms. This Agreement does not supersede any prior Capital Access Loan Program agreement and, if applicable, any corresponding amendment. Any prior Capital Access Loan Program agreement and its amendment will continue to apply to loans enrolled in the Program during the Term that agreement was in effect. The terms and conditions of this Agreement shall apply to all loans enrolled from and after the date of this Agreement.

7.3 **Termination by the Director.** The Director may terminate this Agreement as follows:

- (a) Immediately upon delivery of written notice if Lender is no longer eligible to participate in the Program;
- (b) Immediately upon delivery of written notice if Lender has not made a loan eligible for enrollment in the Program in the preceding twenty-four (24) month period;
- (c) Immediately upon the termination of funding for the Program; and
- (d) Upon thirty (30) days written notice of failure by Lender to comply with the requirements of the Act or the provisions of this Agreement unless during such thirty-day period Lender cures such violation; *provided, however*, that such notice of termination shall be effective immediately if Lender's failure or breach is not susceptible of cure.

7.4 **Cancellation of Future Loan Enrollment.** Notwithstanding Section 7.1 of this Agreement, the Director may cancel its obligation to enroll additional capital access loans upon at least thirty (30) days written notice to Lender. The Director's notice of cancellation shall indicate the date after which capital access loans will not be enrolled in the Program. Cancellation of the Director's obligation to enroll future loans shall not cause this Agreement to be terminated as to any Enrolled Loan then outstanding.

7.5 **Cancellation by Lender.** Notwithstanding Section 7.1 of this Agreement, Lender may cancel its participation in the Program at any time upon at least thirty (30) days written notice to the Director. Lender's notice of cancellation shall indicate the date after which capital access loans will not be made by Lender. Cancellation of Lender's participation in the Program shall not cause this Agreement to be terminated as to any Enrolled Loan then outstanding.

7.6 **Effect of Termination.** Upon the expiration or other termination of this Agreement, the Director shall cease to enroll capital access loans made by Lender in the Program. Lender shall continue to hold the Program Reserve Account, subject to the Director's right to make withdrawals as provided in Section 3.5 of this Agreement, until all Enrolled Loans have either been repaid and Claims in respect of Enrolled Loans, if any, have been finally resolved. At such time as no Enrolled Loans and no Claims remain outstanding, Lender shall return to the Department the amount of moneys then held in the Program Reserve Account. Lender shall continue to submit Quarterly Reports and Annual Reports as described in Article 6 of this Agreement until the final disposition the Program Reserve Account.

ARTICLE 8: MISCELLANEOUS

8.1 **Records Maintenance.** Lender shall maintain for at least three (3) years from the end of the fiscal year in which the record was created all records regarding Lender's participation in the Program. Notwithstanding the foregoing, Lender shall maintain records for each Enrolled Loan for a period of three (3) years after it has been repaid or written off and records regarding the Program Reserve Account for a period of three (3) years after all moneys in the Program Reserve Account have been withdrawn and the account closed. In the event of a dispute, all records relevant to the dispute shall be maintained until the dispute is resolved.

8.2 **Audit and Inspection.** At any time during normal business hours and upon not less than twenty-four (24) hours prior written notice, Lender shall make available to the Director, his agents or other appropriate State agencies or officials all books and records in the possession or control of Lender regarding this Agreement or Lender's participation in the Program. The Director, his agents and other appropriate State agencies and officials may review, audit and make copies of such books and records, and any such inspection of books and records will be undertaken in such a manner as not to interfere unreasonably with the normal

business operations of Lender. Lender shall, at its own cost and expense, segregate records to be made available for inspection pursuant to this Section 8.2 from Lender's other records of operation.

8.3 Notice. Any notice or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail, sent by commercial delivery, or transmitted by facsimile (with the original to follow by mail or commercial delivery) to the following addresses of the parties or to such other address as either party may hereafter furnish by written notice to the other party.

If to the Director:

Ohio Department of Development
77 South High Street, 26th Floor
Columbus, Ohio 43216-1001
Attention: Manager, Office of Minority Financial Incentives
Fax No.: (614) 466-4172

If to Lender:

name:
address:
city, state, zip:
Attention:
Fax No.:

8.4 Certification of Funds. None of the rights, duties and obligations described in this Agreement shall be binding on either party until all statutory provisions of the Ohio Revised Code, including but not limited to, Section 126.07, have been complied with, and until such time as all funds have been made available and are forthcoming from the appropriate state agencies.

8.5 Adherence to State and Federal Laws and Regulations.

(a) General. Lender shall comply with all federal, state, and local laws applicable to the performance of Lender's obligations under this Agreement..

(b) Ethics. In accordance with Executive Order 2007-01S, Lender, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 et seq., §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time. Lender understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Agreement and loss of the benefits of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

8.6 Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization. If applicable, Lender must certify compliance with Ohio Revised Code Section 2909.33.

8.7 Governing Law. This Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

8.8 Forum and Venue. All actions regarding this Agreement shall be brought in a court of competent subject matter jurisdiction in Franklin County, Ohio, and Grantee agrees that venue in such court is proper.

8.9 Entire Agreement. This Agreement, including its exhibits and documents incorporated herein by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees are superseded and no such prior agreements, understandings or representations shall be deemed to affect or modify any of the terms or conditions of this Agreement.

8.10 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity and shall not cause the remainder of this Agreement to be ineffective.

8.11 Amendments. Either party may at any time while this Agreement continues in effect request modifications of its terms. Requests for modification of this Agreement shall be made in writing and shall specify the requested changes and the justification for such changes. The parties shall review the request for modification taking into account applicable legal requirements of the Program. If the parties determine that the Agreement should be so modified, then an amendment shall be written, approved, and executed in the same manner as the Agreement. No modification shall be effective until the amendment is executed by authorized representatives of each party.

8.12 No Implied Waiver, Cumulative Remedies. No failure on the part of the Department to exercise, and no delay in exercising, any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law

8.13 Pronouns. The use of any gender pronoun shall be deemed to include the other gender, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

8.14 Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be used in construing this Agreement.

8.15 Assignment. Neither this Agreement nor any rights, duties, or obligations of Lender pursuant to this Agreement shall be assigned by Lender without the prior express written consent of the Director, which shall not be unreasonably withheld. Any purported assignment not made in accordance with this paragraph shall be void.

8.16 Binding Effect. Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of Lender, its successors and permitted assigns.

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

8.18 Survival. Any provision of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement shall so survive and shall benefit the parties and their respective successors and permitted assigns

8.19 Responsibilities of the Parties The Director and Lender each agrees to be responsible for its respective performance of the obligations or activities in furtherance of this Agreement. No member, officer or employee of the Department, including any person executing this Agreement, shall be personally liable under this Agreement or subject to any personal liability for any reason relating to the execution of this Agreement or the Program. The liability of the State of Ohio and the Department to Lender is limited to the

balance in the Program Reserve Account maintained by the Department for Lender. Lender shall save and hold harmless the State of Ohio, the Department and their officers, employees and agents from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of Lender or its agents or employees in connection with this Agreement and the Program.

IN WITNESS WHEREOF, the parties have caused this Capital Access Program Participation Agreement to be executed by their authorized representatives as of the dates set forth below their respective signatures.

Lender:

State of Ohio

Ohio Department of Development

Lisa Patt-McDaniel
Director,
Ohio Department of Development

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____