

PARTICIPATION AGREEMENT CHECKLIST

1. Fill in date, lender, and address information on page 2.
2. Fill in lender name on page 5.
3. Fill in lender name and address on page 13.
4. Fill in lender name on page 14 (signature page) and have signature page signed.

(Rev 8/10/2017)

PARTICIPATION AGREEMENT

This AGREEMENT is entered into this _____ day of _____, 20____ by and between the Massachusetts Business Development Corporation (MBDC), a corporation, and

_____ , whose address is _____
_____ (the "Lender").

RECITALS

WHEREAS, the Small Business Capital Access Program (the "Program") was created to provide loan insurance for participating financial institutions that originate loans to small businesses; and

WHEREAS, the Lender desires to participate in the Program and to enroll loans made to small businesses for coverage under the Program; and

WHEREAS, the "MBDC", and the Lender desire to set forth the terms and conditions on which the Lender shall participate in the Program and enroll loans thereunder.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

In addition to the words and terms defined elsewhere in the Agreement, each of the following words and terms as used in the Agreement shall have the following meaning unless the context or use indicates another or different meaning or intent, and such definition shall be equally applicable to both the singular and plural forms of the terms as the content may require:

"Affiliate", when describing a relationship with the Lender, shall refer to the same relationship as the relationship between an affiliate and a member bank as described in Section 23A of the United States Federal Reserve Act, 12 U.S.C. Section 221 et. seq., including any amendments to such description that may be made from time to time.

"Borrower" means the recipient of a loan that has been enrolled in the Program or will be filed by the Lender for enrollment in the Program under Article IV hereof.

"Claim" means any claim filed by the Lender pursuant to Section 5.3.

“Early Loan” means any Enrolled Loan if, at the time such loan was enrolled in the Program, the aggregate amount of all loans previously enrolled in the Program by the Lender pursuant to this Agreement was less than \$5,000,000.

“Eligible Loan” means a loan made by the Lender to a Borrower for which the representations and warranties set forth in Section 2.2 are true.

“Enrolled Loan” means a loan enrolled in the Program pursuant to the terms of Article IV hereof.

“Lender Premium” shall have the meaning ascribed to such term in Section 5.1 hereof.

“Matching Premium” shall have the meaning ascribed to such term in Section 5.1 hereof.

“Passive Real Estate Ownership” means ownership of real estate for the purpose of deriving income from speculation, trade or rental, except that such term shall not include (i) the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate or (ii) ownership of real estate for the purpose of construction or renovation, until the completion of such construction or renovation.

“Reserve Fund” means an administrative account maintained at the Lender in the name of and under the control of MBDC to account for funds accumulated pursuant to this Agreement to cover losses sustained by the Lender on Enrolled Loans.

“Small Business” means a business that is resident in Massachusetts and employs two hundred (200) or fewer persons.

ARTICLE II

REPRESENTATIONS

Section 2.1 Representations by MBDC. With respect to any Enrolled Loan, MBDC makes the following representations and warranties as of the time of its enrollment:

- (a) MBDC is a corporation that (i) was established under the provisions of Chapter 671 of the Acts of 1953 of the Commonwealth.
- (b) MBDC has taken all action necessary for it, to authorize, execute and deliver this Agreement. This Agreement is the valid and binding obligation of MBDC, enforceable in accordance with its terms. The execution and performance of this Agreement by MBDC will not violate or conflict with any instrument by which MBDC is bound.

Section 2.2 Representations by the Lender. With respect to each loan that the Lender files for enrollment in the Program pursuant to Article IV (a “Filed Loan”), the Lender makes the following representations and warranties as of the time of such filing:

- (a) The Lender has obtained from the Borrower the following representations and warranties, and, based on knowledge that the Lender has, the Lender has no reason to believe that such representations and warranties not true:
 - (i) The Borrower is a corporation, partnership, joint venture, sole proprietorship, cooperative, or other entity that (x) carries on a business activity for profit or non-profit, (y) has a principal place of business within the Commonwealth, and (z) is an eligible Small Business.
 - (ii) The proceeds of the Filed Loan will be used by the Borrower predominantly for business activities within the Commonwealth.
 - (iii) The proceeds of the Filed Loan will not be used to finance Passive Real Estate Ownership.
 - (iv) The Borrower is not an executive officer, director, or principal shareholder of the Lender, or a member of the immediate family of an executive officer, director or principal shareholder of the Lender, or a related interest of any such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms “executive officer,” “director,” “principal shareholder,” “immediate family,” and “related interest” shall refer to the same relationship to the Lender, whether or not the Lender is a member bank, as the relationship specified for those terms in connection with member banks in Part 215 of Title 12 of the Code of Federal Regulations, including amendments of such Part 215 which may be made from time to time.
 - (v) The aggregate principal amount of all loans to the Borrower from the Lender and any Affiliate of the Lender (including the Filed Loan do not exceed two million dollars (\$2,000,000)).
- (b) The Lender further represents and warrants as follows:
 - (i) That the Lender has received from the Borrower a written representation, warranty and waived in the form set forth in Exhibit A stating that Borrower has no legal, beneficial or equitable interest in the non-refundable premium charges or any other funds credited to the Reserve Fund established to cover losses sustained by the Lender on Enrolled Loans.
 - (ii) That the Lender has not made the Filed Loan in order to place, under the protection provided by the Program, prior debt which (x) is not covered

under the Program and (y) is or was owed by the Borrower to the Lender or to an Affiliate of the Lender.

- (iii) That the Lender has disclosed to the Borrower the information concerning the Program set forth on Exhibit B hereto, or such modified exhibit as may be specified by MBDC from time to time upon written notice to the Lender.
- (iv) That the Lender has complied with all federal and state laws, rules and regulations pertaining to the making of the Filed Loan.
- (v) That Lender is a “financial institution” as defined in the United States Code (18USC-20).

ARTICLE III

ESTABLISHMENT OF THE RESERVE FUND

Upon execution of this Agreement MBDC shall establish an administrative deposit account with the Lender in the name and under the control of MBDC for the purpose of receiving all Lender Premiums and Matching Premiums required pursuant to Section 5.1 hereof. The account shall be called the:

MBDC Reserve Fund - _____*, (the
“Reserve Fund”).

* Insert name of lender

ARTICLE IV

ENROLLMENT OF LOANS IN PROGRAM

Section 4.1 A Filed Loan may be made with such interest rate, fees, and other terms and conditions as the Lender and Borrower may agree. In the event a Filed Loan is in the form of a line of credit, the amount of the loan shall be considered to be the maximum amount that can be drawn down under such line of credit.

Section 4.2 In order to enroll a loan in the Program, the Lender shall, within ten (10) days after the day the Lender makes the Loan, file the loan for enrollment by delivering to MBDC the following:

- (a) A copy of Exhibit C, or such modified exhibit as may be specified by MBDC from time to time in writing to the Lender, in completed form and bearing an execution signature of an authorized officer of the Lender.
- (b) The Lender Premium due in accordance with Section 5.1, or evidence that such Lender Premium has been deposited into the Reserve Fund in accordance with procedures specified by MBDC.

For the purposes of this Agreement, the date on which the Lender makes a loan shall be deemed to be the earlier of (i) the date on which the Lender first disburses proceeds of the loan to the Borrower or (ii) the date on which the loan documents relating to the loan are executed and the Lender has become obligated pursuant thereto to forthwith or thereafter disburse the proceeds of the Loan. For the purposes of this Agreement, the filing of a loan for enrollment shall be deemed to occur on the date on which the Lender delivers to MBDC, delivers to a professional courier service for delivery to MBDC, or mails to MBDC, the documentation required by this Section.

Section 4.3 Upon receipt by MBDC of the documentation identified in Section 4.2 hereof, MBDC shall (i) enroll the loan unless the information provided pursuant to Section 4.2 indicates that the loan is not an Eligible Loan, and (ii) mail or otherwise deliver to the Lender, within five (5) business days of such receipt, an acknowledgment that the Loan has been enrolled, which acknowledgement shall either include a check for the Matching Premium to be deposited into the Reserve Fund pursuant to Section 5.1 or evidence to the effect that deposit of such Matching Premium has occurred.

Section 4.4 When filing a loan for enrollment, the Lender may specify an amount to be covered under the Program that is less than the total amount of the loan. Unless the context clearly requires otherwise, when used in this Agreement in connection with a loan or loans, the words “amount” and “proceeds” shall refer only to the amount covered under this Agreement.

Section 4.5 If the Lender makes a loan to a Borrower which is a refinancing of a loan previously made to the Borrower by the Lender or an Affiliate of the Lender, and such prior loan was not enrolled under the Program, and if additional or new financing is extended by the Lender as part of the refinancing, the Lender may file the loan for enrollment pursuant to Section 4.2, with the amount of the loan to be covered under the Program not exceeding the amount of such additional or new funding.

Section 4.6

- (a) In the event that an Enrolled Loan is refinanced, and the total amount to be covered under the Program does not exceed the covered amount of the loan that was previously enrolled, the loan, as refinanced, may continue as an Enrolled Loan, and there shall be no additional Lender Premium or Matching Premium due on account of such refinanced loan.

(b) If the refinancing of an Enrolled Loan under this Section results in the outstanding balance of an Enrolled Loan being increased, the Lender at the time of such refinancing shall be deemed to have made, with respect to such refinanced loan, the representations and warranties specified for the Lender in Section 2.2(a) and Section 2.2(b) (ii) and (iv) hereof.

Section 4.7 In the event that an Enrolled Loan is refinanced in an amount which does exceed the amount of such loan as previously enrolled, and if the Lender wishes the amount of the refinanced loan which is to be covered under the Program to exceed the amount covered when the loan was previously enrolled, the Lender shall file again the loan for enrollment pursuant to Section 4.2, with payments and transfers to be made into the Reserve Fund based on the amount to be covered which is in excess of the previous covered amount.

Section 4.8 For the purposes of this Agreement, fluctuations in the outstanding balance of a line of credit, without increasing the covered amount under the Program, shall not be deemed to be a refinancing of the loan.

Section 4.9 If the outstanding balance of an Enrolled Loan, which is not a line of credit, is reduced to zero, such loan shall no longer be considered an Enrolled Loan. If an Enrolled Loan which is a line of credit has an outstanding balance of zero for a twelve (12) month period, such line of credit shall no longer be considered an Enrolled Loan, unless before the expiration of the twelve (12) month period the Lender has reaffirmed in writing to the Borrower that the line of credit will remain open, and the Borrower has acknowledged in writing such reaffirmation.

ARTICLE V

USE OF THE RESERVE FUND

Section 5.1 Payments and Transfers to the Reserve Fund. The premium charges payable to the Reserve Fund by the Lender and the Borrower in connection with a loan being filed for enrollment with MBDC pursuant to Section 4.2 shall be prescribed by the Lender provided that (i) the amount paid by the Borrower shall not be less than 3% or greater than 7% of the amount of the loan and (ii) the amount paid by the Lender shall be equal to the amount paid by the Borrower. The Lender may recover from the Borrower the cost of the Lender's payment hereunder in any manner agreed to by the Lender and the Borrower. Such premium charges of the Lender and Borrower are referred to herein collectively as the "Lender Premium."

With respect to each loan enrolled by the Lender in the Program pursuant to this Agreement, for purposes of creating reserve funds with financial institutions that participate in the Program then, to the extent such funds remain available, MBDC shall transfer into the Reserve Fund at or about the time such loan is so enrolled an amount determined as follows and to be referred to herein as the "Matching Premium":

(a) MBDC shall deposit into the Reserve Fund an amount equal to 100% of the Lender Premium with respect to such loan.

In connection with a loan which the Lender anticipates will become an Enrolled Loan, if the Lender wishes to assure itself that allocated funds are available to enable MBDC to transfer into the Reserve Fund the Matching Premium that will be due in accordance with this Section, the Lender may obtain a reservation from MBDC of the appropriate amount, in accordance with procedures specified by MBDC. Such reservation may be obtained before or after the Lender enters into the contract for the loan, and shall be binding on MBDC if MBDC receives the documentation identified in Section 4.2 with respect to such loan within twenty-five (25) days after the date of the reservation.

Section 5.2 Control of Reserve Fund. All funds credited to the Reserve Fund shall be in the name and under the control of MBDC. MBDC may not withdraw funds from the Reserve Fund except as is specifically provided for in the Agreement.

Interest or income earned on the funds in the Reserve Fund shall be deemed to be part of the Reserve Fund. However, MBDC is authorized to withdraw at any time from the Reserve Fund all or a portion of that amount of funds, which is equal to all interest or income that has been credited to the Reserve Fund and not previously withdrawn by MBDC. Any funds so withdrawn may be used by MBDC to defray general administrative costs associated with the Program, and may be withdrawn prior to paying any Claim under Section 5.4, and none of such amounts so withdrawn shall ever be required to be transferred back to the Reserve Fund.

Section 5.3 Claims by Lender to Reserve Fund. If the Lender charges off all or part of an Enrolled Loan, the Lender may file a Claim with MBDC by submitting a completed claim form in the form attached hereto as Exhibit D, or such modified exhibit as may be specified by MBDC, bearing the execution signature of an authorized officer of the Lender. Any Claim that is filed hereunder shall be filed contemporaneously with the action of the Lender to charge off all or part of the loan.

Lender's Claim may include in addition to the amount of principal and accrued interest charged off (in each case subject to the last sentence of this paragraph) an amount which represents its out-of-pocket expenses incurred in pursuing its collection efforts, including preservation of collateral. The Lender shall retain documentation in its files evidencing all expenses for which a Claim is filed. The amount of principal and accrued interest included in the Claim shall not exceed the principal amount covered under the Program upon enrollment, plus not more than six months accrued interest thereon.

With respect to each Enrolled Loan, the Lender shall determine when and how much of such loan to charge off in a manner consistent with its normal method for making such determinations on business loans that are not Enrolled Loans.

If the Lender files two (2) or more Claims contemporaneously, and if there are insufficient funds in the Reserve Fund at that time to cover the entire amounts of such Claims, the Lender may

designate the order of priority in which MBDC shall pay such claims in accordance with Section 5.4.

Section 5.4 Disbursement of Reserve Fund.

- (a) Upon receipt by MBDC of a Claim filed by the Lender in accordance with Section 5.3, MBDC shall promptly pay, from funds in the Reserve Fund, such Claim as submitted, except that MBDC may reject a Claim when the representations and warranties provided by the Lender in Section 2.2 hereof were known by the Lender to be false at the time the loan was filed for enrollment.
- (b) If there are insufficient funds in the Reserve Fund to cover the entire amount of any Claim, MBDC shall pay to the Lender an amount equal to the current balance in the Reserve Fund (a "Partial Payment") and the following shall apply:
 - i. If the Enrolled Loan for which such Claim has been filed is not an Early Loan, such Partial Payment shall be deemed to fully satisfy such Claim, and the Lender shall have no other or further right to receive any amount from the Reserve Fund with respect to such Claim.
 - ii. If the loan is an Early Loan such Partial Payment shall not be deemed to be in full satisfaction of such Claim, and at any time thereafter when the balance of the Claim remaining after such Partial Payment is less than seventy-five (75%) percent of the balance in the Reserve Fund MBDC, upon the written request of the Lender, shall pay such remaining balance of the Claim.

Section 5.5 Recovery by Lender Subsequent to Claim. If subsequent to payment of a Claim by MBDC the Lender shall recover any amount with respect to the loan for which payment of the Claim was made, the Lender shall promptly pay to MBDC for deposit in the Reserve Fund such amount as is recovered, less any out-of-pocket expenses incurred in connection with such recovery, but in any event only to the extent that such net recovery exceeds the Lender's loss on such loan after taking into account payment of such Claim and any prior net recoveries with respect to such loan. The Lender shall retain documentation in its file evidencing any such out-of-pocket recovery expenses.

For the purposes of this Section and Section 5.6, the Lender's loss on an Enrolled Loan shall include any losses on the loan involving principal, not more than six months accrued interest thereon, and documented out-of-pocket collection expenses, including expenses attributable to principal amounts in excess of the amount covered under the Program or the principal amount included in the Claim.

Section 5.6 Subrogation.

- (a) If the payment of a Claim pursuant to Section 5.4 has fully covered the Lender's loss on an Enrolled Loan, or if the payment of a Claim pursuant to Section 5.4

when combined with any recovery from the Borrower has fully covered the Lender's loss, MBDC, upon its request, shall be subrogated to the rights of the Lender with respect to any collateral, security or other right of recovery in connection with the loan which has not been realized upon by the Lender. The Lender thereafter shall assign to MBDC any right, title or interest to any collateral, security, or other right of recovery in connection with the loan. If such assignment has been made, MBDC shall not be required to undertake any obligations of the Lender pursuant to its loan documents, except for any obligations directly related to the exercise by MBDC of its assigned rights of recovery in connection with the loan. The 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. The Lender shall provide MBDC with all reasonable assistance thereafter as MBDC may request in proceeding with respect to any such collateral, security or other right of recovery, except that such reasonable assistance shall not require the Lender to incur any out-of-pocket expenses. Any funds received by MBDC as a result of enforcement actions taken with respect to any such collateral, security, or other right of recovery shall promptly deposited by MBDC in the Reserve Fund, less any out-of-pocket expenses incurred by MBDC in taking such enforcement actions.

- (b) Notwithstanding any other provision of this Agreement, MBDC shall not exercise its right of subrogation unless MBDC determines, in its sole discretion, that the Lender has not exercised reasonable care and diligence in its collection activities with respect to the loan, or that there is a reasonable basis for believing that the Lender will not exercise such reasonable care and diligence in the future with respect to such collection activities.
- (c) If MBDC determines that it desires to exercise its right of subrogation in connection with an Enrolled Loan, and would be entitled to exercise such right except for the fact that the Lender's loss has not been fully covered, MBDC, at its option, may pay, from funds in the Reserve Fund, an amount sufficient to result in the Lender's loss being fully covered, notwithstanding the fact that such payment may cover a principal amount not covered under the Program or not included in the Lender's Claim. Upon making such payment pursuant to this subsection, MBDC shall be subrogated to the rights of the Lender in accordance with Section 5.6(a) hereof.

ARTICLE VI

WITHDRAWAL OF EXCESS RESERVE FUNDS

Section 6.1 On or before February 15, May 15, August 15, and November 15 of each year, the lender shall file a report with MBDC indicating the number and aggregate outstanding balance

of all Enrolled Loans as of the previous December 31 in the case of the report due February 15, as of the previous March 31 in the case of the report due May 15, as of the previous June 30 in the case of the report due August 15, and as of the previous September 30 in the case of the report due November 15. Such report shall not be required for any March 31, June 30, September 30 or December 31 if the balance in the Reserve Fund as of that date is zero. In computing the aggregate outstanding balance of all Enrolled Loans, the balance of any Enrolled Loan shall in no event be considered to be greater than the amount of such Enrolled Loan that is enrolled in and covered under the Program. If (i) reports filed pursuant to this Section 6.1 indicate that for the immediately preceding twenty-four (24) month period the balance in the Reserve Fund continually exceeded the aggregate outstanding balance of all Enrolled Loans, or (ii) the Lender shall notify MBDC that it does not intend to enroll new loans under the Program, then MBDC may withdraw from the Reserve Fund, on or before the last day of the month in which the most recent report was due, an amount not greater than the amount by which the Reserve Fund balance exceeded the aggregate outstanding balance of all Enrolled Loans as of the most recent report, unless (in the case of a withdrawal pursuant to clause (i)) the Lender has provided to MBDC adequate documentation that at some time during such twenty-four (24) month period, the aggregate outstanding balance of all Enrolled Loans exceeded the balance then in the Reserve Fund. Any funds so withdrawn shall be held by MBDC.

Section 6.2 If MBDC is entitled to withdraw funds from the Reserve Fund pursuant to Section 6.1, but the Lender's report pursuant to Section 6.1, which report in combination with prior consecutive reports demonstrates MBDC's right to withdraw, is not timely filed with MBDC, MBDC shall have fifteen (15) days from its actual receipt of such report to withdraw such funds.

If such report is not filed within thirty (30) days of its original due date, MBDC shall be entitled to withdraw from the Reserve Fund, based on MBDC's determination from an inspection of the Lender's files pursuant to Section 9.3, an amount not greater than the amount by which the Reserve Fund balance exceeded the aggregate outstanding balance of all Enrolled Loans as of the date for which such report was required to be filed.

ARTICLE VII

TERMINATION

Section 7.1 MBDC may in its sole discretion terminate this Agreement. Such termination shall be applicable on the effective date specified in the notice of termination, except that such termination shall not apply to any loan, which is made on or before the date on which the notice of termination is received by the Lender. However, if MBDC is terminating the enrollment of loans not merely for the Lender but instead for all participating lenders under the Program, MBDC shall provide notice of at least ninety (90) days to the Lender. Any terminations under this Section shall be prospective only, and shall not apply to any loans previously enrolled under the Program, except that if a previously Enrolled Loan is refinanced, the amount covered under the Program shall not be increased beyond the covered amount as previously enrolled.

Section 7.2 Subsequent to a termination pursuant to Section 7.1 hereof, if the balance of the Reserve Fund is reduced to zero, this Agreement shall automatically terminate.

ARTICLE VIII

PLEDGE OF THE RESERVE FUND

MBDC agrees that the funds in the Reserve Fund from time to time will be made available to pay Claims pursuant to Section 5.4, and MBDC will not encumber or pledge the funds to any other party. Nothing contained herein is intended to diminish the control of the Reserve Fund granted to MBDC in Section 5.2 or shall affect the rights of MBDC to withdraw funds from the Reserve Fund pursuant to Section 5.2 or Article VI. Any funds withdrawn from the Reserve Fund by MBDC in accordance with this Agreement shall no longer be subject to the agreement provided in the first sentence of this Article VIII.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Amendments to Agreement. MBDC may, upon at least forty-five (45) days notice to the Lender, amend any provision of this Agreement. However, in the absence of the consent of the Lender, no such amendment shall be applicable to loans made prior to the effective date of the amendment, and no such amendment shall diminish Lender's rights with respect to funds in the Reserve Fund as of the effective date of the amendment.

Section 9.2 The Lender shall provide MBDC with such information regarding its participation in the Program as MBDC may reasonably request.

Section 9.3 Inspection of Files. Upon notice to the Lender, MBDC may inspect the files of the Lender relating to any loans enrolled under the Program during normal business hours of the Lender.

Section 9.4 Compliance with Applicable Law. The Lender shall comply with all applicable federal and state laws, rules and regulations.

Section 9.5 Limitation of Rights. This Agreement shall be for the exclusive benefit of the Lender and MBDC, 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.

Section 9.6 Severability. If any clause, provision or section of this Agreement is held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.

Section 9.7 Notices. All notices, certificates, requests or other communications hereunder shall be sufficiently given when delivered by messenger, by professional courier service or by registered or certified mail postage prepaid, return receipt requested, addressed as follows:

If to MBDC:

Massachusetts Business Development Corporation
500 Edgewater Drive
Wakefield, MA 01880
Attention: Capital Access Program

If to the Lender:

Section 9.8 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

Section 9.9 Reports of Regulatory Agencies. The Lender hereby consents to the transmittal to MBDC, by any financial institutions regulatory agency of the federal or state governments, any information directly relating to the Lender’s participation in the Program. Except as required by law, MBDC shall hold any information acquired pursuant to this Section strictly confidential.

Section 9.10 No Personal Liability. No member, officer or employee of the Massachusetts Business Development Corporation, including any person executing this Agreement, shall be liable personally under this Agreement or subject to any personal liability for any reason relating to the execution of this Agreement or the Program.

Section 9.11 Collateral. Except upon the exercise of MBDC’s right of subrogation as set forth in Section 5.6, MBDC shall have no legal or equitable interest in any collateral, security, or other right of recovery in connection with any Enrolled Loan, and accordingly MBDC’s consent is not necessary for any amendment to the documents or agreements between the Lender and Borrower relating to such loan. This Section shall not be construed to modify any obligation of the Lender to make payments to the Reserve Fund pursuant to Section 5.5.

Section 9.12 Within the context of the objectives of the Program, the Lender agrees to exercise reasonable care and diligence in the making and collection of loans under the Program.

Section 9.13 Captions. The captions in this Agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions or sections of this Agreement.

Section 9.14 Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of The Commonwealth of Massachusetts.

MASSACHUSETTS BUSINESS
DEVELOPMENT CORPORATION

By _____

Name: David Harrington

Title: Director of CAP

Lender

By _____

Name:

Title:

EXHIBIT A

BORROWER'S REPRESENTATIONS REGARDING RESERVE FUND

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

- (a) that the loan to be made by _____*, will be filed for enrollment by the Lender in the Small Business Capital Access Program (the "Program"), a program established by Massachusetts Business Development Corporation ("MBDC");
- (b) that the purpose of the Program is to assist the Lender in making loans that might otherwise not qualify for a loan from the Lender;
- (c) that as a condition of having the loan filed for enrollment in the Program, the Borrower is required to pay a non-refundable premium charge to an administrative account called the Reserve Fund, which Reserve Fund has been established in accordance with the Program to help cover losses that the Lender may sustain on loans enrolled in the Program; and
- (d) that the Borrower's payment of its non-refundable premium charge will be collected by the Lender for transmittal to the Reserve Fund, and that other payments or transfers will be made to the Reserve Fund by the Lender and MBDC.

The Borrower acknowledges the foregoing and hereby represents and warrants that it has no, and has not been promised or told by anyone that it has any, legal, beneficial or equitable interest in the aforementioned non-refundable premium charges or any other funds credited to the Reserve Fund, and hereby waives any right, claim or interest to any and all such funds paid or credited to the Reserve Fund from time to time.

The Borrower agrees to participate in a press release or news article on the Capital Access Program (CAP), which may be published in any local business news publication, the Massachusetts Business Development Corporation (MBDC) or BDC Capital website.

Name of Borrower

By: _____
An authorized signatory
Name:
Title:

Dated: _____

* (Insert name of Lender.)

EXHIBIT B

NOTICE TO BORROWER

This notice is provided to borrowers who may receive a loan from a lender under the small business Capital Access Program.

The purpose of this program is to assist lenders to make loans that might otherwise not qualify for a loan from a financial institution. The program utilizes a special loss reserve to assist the lender in covering losses from a portfolio of loans that a lender makes under the program. The borrower pays a premium charge to the reserve, which is matched by a lender premium payment to the reserve. The Massachusetts Business Development Corporation, will then match the combined total of the Borrower's payment and the lender's payment.

It is important to emphasize that the loan is a private transaction between the lender and the borrower. While the program may assist a lender in being able to take more risk than normal, it is important to understand that it is still the lender that is bearing the risk of the loan. Massachusetts Business Development Corporation is not a party to the loan and does not play any role at all in the lender's decision regarding whether or not to make the loan, or in the setting of the interest rate, fees, duration, or any other terms or conditions of the loan. The lender's rights and remedies are delineated in the loan contract and in law applicable to any financing from such financial institution. Massachusetts Business Development Corporation does not play any role in any decision by the lender with respect to enforcing the lender's rights under the loan contract.

While the program is intended to assist the lender in providing you with access to financing, you should understand that it is likely to be more expensive for the borrower than would be the case with a conventional loan. Not only does the borrower make a payment to the reserve, but it is expected that the lender may, in some manner, recover from the borrower the costs of the lender's payment into the reserve.