



Virginia Small Business
Financing Authority

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY'S CAPITAL ACCESS PROGRAM

LENDER PARTICIPATION AGREEMENT

This LENDER PARTICIPATION AGREEMENT ("Agreement") is entered into this ____ day of _____, 20__, by and between the Virginia Small Business Financing Authority (VSBFA), a public body corporate and a political subdivision of the Commonwealth of Virginia, whose address is 101 North 14th Street, 11th Floor, P. O. Box 446, Richmond, VA 23218-0446, and _____ (the "Lender") whose address is _____

Recitals

WHEREAS, the VSBFA was created by the Virginia Small Business Financing Act ("Act"), Section 2.2-2279 et seq. of the Code of Virginia, as amended, (the "Act") to provide financial programs for endeavors relating to industrial and commercial enterprise; and

WHEREAS, the VSBFA has determined that in order to promote economic development and help create jobs for the citizens of the Commonwealth of Virginia ,there is a crucial need to assist in providing access to financing for Virginia businesses that otherwise might not be able to obtain such financing; and

WHEREAS, the VSBFA finds that economic development and job creation will best be promoted in Virginia through broad-based lender participation in the Capital Access Program ("Program"); and

WHEREAS, VSBFA has determined that establishing a reserve fund to cover a portion of potential losses a lender may incur in the event of borrower default will promote and serve the intended purposes of and in all respects will conform to the provisions and requirements of the Act; and

WHEREAS, the Program was initially created by the Virginia Small Business Growth Fund, Section 2.2-2310 of the Code of Virginia, to be used as a special reserve fund to cover potential future losses from the loan portfolios of participating lending institutions; and further enhanced in 2010 by the VSBFA pursuant to the Small Business Jobs Act of 2010, Public Law No. 111 240 (enacted September 27, 2010); and

WHEREAS, the VSBFA and the Lender desire to set forth the terms and conditions of the loan loss reserve fund that will apply to loans enrolled under the Program as defined herein pursuant to this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, 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 mean the parent company of Lender, or any present or future company that controls, is controlled by, or is under common control with Lender, including any subsidiary of Lender as defined under 12 U.S.C. §1841(d).

"Borrower" means the recipient of an Eligible Loan filed or to be filed by the Lender for enrollment under the Program pursuant to this Agreement.

"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 a place of business that is not for passive real estate investment purposes.

“Program” means a capital access program created by the VSBFA, including but not limited to a capital access program created by the VSBFA pursuant to the Small Business Jobs Act of 2010, Public Law No. 111 240 (enacted Sept. 27, 2010).

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

“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 and the amount does not exceed \$5,000,000.

“Enrolled Loan” means an Eligible Loan enrolled by the State pursuant to the terms of Article IV of this Agreement.

“Principal” is defined (a) for a sole proprietorship, as the proprietor; (b) for a partnership, as each partner; and (c) for a corporation, limited liability company, association or a development company, as each director, each of the five most highly compensated executives, officers, or employees, and each direct or indirect holder of 20 percent or more of the ownership of stock or stock equivalent of the entity.

“Reserve Fund” means an interest-bearing administrative account insured by the Federal Deposit Insurance Corporation, established and maintained by the VSBFA to account for funds accumulated pursuant to this Agreement to cover losses sustained by the Lender on Enrolled Loans made by the Lender.

“Eligible Business” means a business entity which satisfies at least one of the following requirements: a) has \$10 million or less in annual revenues over each of the last three years; or b) has a net worth of \$2 million or less; or c) has fewer than 250 employees in Virginia, or 750 employees overall; or d) is a 501 (c) 3 entity.

Article II: Representations

Section 2.1 Representations by the VSBFA

With respect to any Enrolled Loan, the VSBFA makes the following representations and warranties as of the time of the enrollment:

- a) The VSBFA is a public body corporate and political subdivision established and acting pursuant to the Act.
- b) The VSBFA has the necessary power [under Virginia Code and the Small Business Jobs Act], and has duly taken all action on its part required to authorize, execute and deliver this Agreement. This Agreement when executed will be valid, binding and enforceable in accordance with its terms. The execution and performance of this Agreement by the VSBFA will not violate or conflict with any instrument by which the VSBFA is bound.
- c) The VSBFA will not impose an eligibility restriction on the enrollment of an Eligible Loan in the Program based on the geography of the Borrower, except a requirement that the Borrower be located within Virginia.
- d) The VSBFA will not impose an employee size restriction of less than 250 employees with respect to a Borrower's eligibility to participate in the Program.
- e) The VSBFA will not impose a restriction on the maximum term of an Enrolled Loan that is less than **10** years for term loans and **10** years for lines of credit.
- f) The VSBFA will not impose a restriction on the maximum amount of an Enrolled Loan that is less than \$500,000.
- g) The VSBFA will not impose a restriction that prevents partial enrollments of Eligible Loans or lines of credit from being Enrolled Loans.
- h) The VSBFA will not impose a restriction that prevents non-profit entities from being Borrowers in the Program.
- i) The VSBFA is compliant and will comply with all applicable statutes, rules and regulations, including, to the extent that the VSBFA falls within the scope thereof, the provisions of the Small Business Jobs Act of 2010.

Section 2.2 Representations by the Lender

With respect to any Eligible Loan that the Lender files for enrollment under this Agreement, the Lender makes the following representations and warranties as of the time of each filing:

- a) The Lender has obtained in writing from the Borrower (1) Borrower Certification Form, and (2) Borrower Certification for Use of Proceeds, and (3) Borrower Sex Offender Certification in the forms as shown in Exhibit 2 containing the following representations and warranties and, based on knowledge that the Lender has, the Lender has no substantial reason to believe that such representations and warranties are not true:

- (i) The Borrower is an Eligible Business.
- (ii) The Borrower is a corporation, partnership, joint venture, sole proprietorship, cooperative, or other entity (including a state-designated charitable, religious or other non-profit or eleemosynary institution or faith-based organization), which is authorized to conduct business in Virginia.
- (iii) The proceeds of the Eligible Loan will be used for a Business Purpose.
- (iv) The proceeds of the Eligible Loan will not be used:
 - 1. To repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
 - 2. To repay taxes held in trust or escrow (e.g., payroll or sales taxes);
 - 3. To reimburse funds owed to any owner, including any equity injection or injection of capital for the Borrower's continuance;
 - 4. To purchase any portion of the ownership interest in the Borrower; or to purchase any portion of the ownership interest in any company, including 100% interest;
 - 5. For 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. In the event that a loan is made to a real estate holding company (RE) for the benefit of a related operating company (OC), the OC must be a co-borrower or guarantor of the loan, both the RE and OC must execute the Borrower certifications, all persons holding 20% ownership or more in either company must guarantee the debt and there must be a written lease with a term at least equal to the term of the loan and both companies must be eligible businesses as described under Definitions;
 - 6. To purchase goodwill;
 - 7. To provide financing to a religious establishment unless the proceeds of the loan are used only for a "business purpose." A "business purpose" does not include an explicitly religious purpose, and the proceeds of the loan to a religious establishment may not be used for the purposes of supporting, assisting, or furthering an explicitly religious purpose, including, but not limited to, worship, religious instruction, or proselytization.
- (v) The Borrower is not an executive officer, director, or principal shareholder of the Lender, a member of the immediate family of an executive officer, director or principal shareholder of the Lender, or a related interest of an executive officer, director, or principal shareholder of the Lender. For the purpose 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 to Part 215 which may be made from time to time.
- (vi) The Borrower is not:
 - 1. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the Borrower and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the Borrower;
 - 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 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, including the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution; or
5. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales.
6. No Principal of the Borrower has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911)). National registry is at <http://www.nsopw.gov/Core/Portal.aspx>.

b) The Lender has provided in writing a certification in the form of Exhibit 3 containing the following representations and warranties:

- (i) The Lender has not made the Eligible Loan in order to place, under the protection provided by 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.
- (ii) The Lender has not made the Eligible Loan as a refinancing of a loan (other than an existing Enrolled Loan) previously made to the Borrower by the Lender or an Affiliate of the Lender.
- (iii) The Lender has not made the Eligible Loan to cover the unguaranteed portion of a US Small Business Administration (SBA) loan, or, to its knowledge, to cover the unguaranteed portion of a loan guaranteed by any other federal, state or local government or public entity.
- (iv) The Lender has disclosed to the Borrower information concerning the Program as set forth in the Borrower Certification Form attached hereto as Exhibit 2.

c) As required by Section 3011(c)(2) of the Small Business Jobs Act of 2010, the private entity hereby certifies to the participating State that the Principals of the private entity have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this Certification, Principal means the following: if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.

Lender agrees to notify the VSBFA if and when it becomes aware of an event which occurs that renders this certification to be obsolete. Such event could be a change in principals or a conviction of an existing principal for a sex offense against a minor. The VSBFA, in its own discretion, may require a periodic resubmission of the certifications on an annual basis.

Article III: Establishment of the Reserve Fund

Upon execution of this Agreement, the VSBFA shall establish the Reserve Fund in the name of the VSBFA for the purpose of receiving all required premium charges to be paid by the Lender and the Borrower, and transfers made by the VSBFA, pursuant to Section 5.1. **The Reserve Fund shall be titled Virginia Small Business Financing Authority - Capital Access Program Reserve Fund.** The Reserve Fund account shall be interest bearing in accordance with accounts of this type, and the Lender may not charge VSBFA for any fees related to VCAP loan transactions or for the maintenance of the Reserve Fund account. The Reserve Fund accounts are public deposits pursuant to the Security for Public Deposits Act and must be indicated as such on the Lender's records. The Lender is subject to the collateralization and reporting requirements of the Act.

If the Lender has an existing reserve fund established under another capital access program in Virginia, the Lender may request that the existing reserve fund be combined, at the VSBFA's discretion, with the Reserve Fund established under this

Agreement to the extent permitted by the existing reserve fund's governing agreements. In the event that a Lender's existing reserve fund is not combined with the Reserve Fund, the Lender may submit Claims to the Reserve Fund or the existing reserve fund to the extent permitted by the existing reserve fund's governing agreements. A list of any loans outstanding associated with the existing reserve fund must be provided to the VSBFA prior to the combination of the Reserve Fund with any existing reserve funds.

Article IV: Enrollment of Loans in Program

Section 4.1 In General

An Eligible Loan to be filed for enrollment under this Agreement may be made with the interest rate, fees, and other terms and conditions as the Lender and Borrower may agree. The Eligible Loan may be in the form of a term loan or a line of credit, and in the case of a line of credit the amount of the Eligible Loan shall be considered to be the maximum amount that can be drawn down against the line of credit, unless Lender elects to enroll only a portion of the line of credit in the Program, in which case the amount of the Eligible Loan shall be considered to be the amount filed for enrollment.

Section 4.2 Enrolling a Loan

Only Eligible Loans may be enrolled in the Program. In order to enroll an Eligible Loan under the Program, the Lender shall file the Eligible Loan for enrollment by delivering to the VSBFA the following:

- a) Transmittal of the non-refundable premium charges payable as set forth in Section 5.1 in connection with the loan by the Lender and the Borrower, or evidence that such transmittal has occurred.
- b) Exhibit 3 in completed form bearing the execution signature of an authorized officer of the Lender.
- c) Exhibit 2 in completed form bearing the execution signature of an authorized officer of the Borrower.

The Lender shall file the Eligible Loan for enrollment within ten (10) days after the Lender makes the Eligible Loan. For the purposes of this Agreement, the date on which the Lender makes an Eligible Loan shall be deemed to be the date on which the Lender first disburses proceeds of the Eligible Loan to the Borrower, or such earlier date on which the loan documents have been executed and the Lender has obligated itself to disburse proceeds of the Eligible Loan. For the purposes of this Agreement, the filing of an Eligible Loan for enrollment shall be deemed to occur on the date of which the Lender delivers to the VSBFA, delivers to a professional courier service for delivery to the VSBFA, mails to the VSBFA, faxes to the VSBFA, or emails to the VSBFA, the documentation or, in the case of delivery by fax or email, a scanned image of the documentation required by this Section.

Section 4.3 VSBFA Acknowledgement

Upon receipt by the VSBFA of the documentation identified in Section 4.2, the VSBFA shall enroll the Eligible Loan unless the information provided indicates that it is not an Eligible Loan, and shall mail or otherwise deliver to the Lender, within ten (10) business days of such receipt, an acknowledgement of enrollment, bearing the execution signature of an authorized representative of the VSBFA, including documentation of the amount being transferred by the VSBFA into the Reserve Fund pursuant to Section 5.1. The VSBFA may assign a unique loan identification number to each Enrolled Loan.

In the event that the VSBFA no longer has funds to transfer to the Reserve Fund or does not have sufficient funds for a transfer matching the Borrower and Lender premium charges, the VSBFA will have no existing or continuing obligation to transfer funds to the Reserve Fund, the VSBFA will inform the Lender of the funds insufficiency, and the Lender may request that (a) the VSBFA accept the deposit of the Borrower and Lender premium charges in the Reserve Fund, or (b) a refund of the Borrower and Lender premium charges from the VSBFA if such charges have already been deposited in the Reserve Fund, in which case the VSBFA shall promptly refund the same.

Section 4.4 Amount Covered

When filing an Eligible Loan for enrollment, the Lender may specify an amount to be covered under the Program that is less than the total amount of the Eligible Loan. Unless the context clearly requires otherwise, when used in this Agreement in connection with an Eligible Loan, the words "amount" and "proceeds" shall refer only to the portion of the Eligible Loan covered under this Agreement.

Section 4.5 Refinancing Enrolled Loans

- a) In the event that an Enrolled Loan that has not reached its maturity or due date is refinanced and the total amount to be covered under the Program does not exceed the covered amount of such Enrolled Loan, the Enrolled Loan, as refinanced, may continue as an Enrolled Loan and there shall be no additional premium charges payable or transferred into the Reserve Fund.
- b) In the event that an Enrolled Loan is refinanced in an amount which exceeds the amount of such Enrolled Loan, and if the Lender wishes the amount of the refinanced Enrolled Loan to exceed the amount previously enrolled, the Lender shall file again such refinanced Enrolled Loan for enrollment pursuant to Section 4.2 with premium payments and transfers to be made into the Reserve Fund based on the amount of the Enrolled Loan to be covered that exceeds the amount of the existing Enrolled Loan.
- c) 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 the refinancing shall be deemed to have made, with respect to such refinanced Enrolled Loan, the representations and warranties specified for the lender in Section 2.2.

Section 4.6 Lines of Credit Balances

For the purposes of this Agreement, fluctuations in the outstanding balance of an Enrolled Loan that is a line of credit, without increasing the covered amount under the Program, shall not be deemed to be a refinancing of such Enrolled Loan.

Section 4.7 Enrollment Period

The enrollment period for Enrolled Loans which are (a) term loans, shall be the term of such term loans and (b) lines of credit, shall be the maturity date of such line. Such enrollment periods may be extended as provided in the Notice of Material Change / Extended Enrollment in the form of Exhibit 4 attached hereto, but in no event to a date which is ten years beyond the original enrollment date.

Section 4.8 Material Changes to Enrolled Loan / Extended Enrollment

In the event of a change to the terms of an Enrolled Loan which has the effect of (a) extending the maturity date, in the case of a term loan or line of credit, beyond the maturity date thereof, or (b) changing the loan type from a term loan to a line of credit or vice versa, Lender shall within 90 days of the effective date of such change, deliver to the VSBFA a Notice of Material Change / Extended Enrollment.

Section 4.9 Termination as an Enrolled Loan

If the outstanding balance of an Enrolled Loan that is not a line of credit is reduced to zero for a period exceeding 60 consecutive calendar days, that Enrolled Loan shall no longer be considered an Enrolled Loan. A line of credit terminates at its maturity date or when the lender no longer reports the line commitment as active on the quarterly report pursuant to Section 6.1.

Section 4.10 No Pledge of Faith, Credit, or Taxing Power

The enrollment of an Eligible Loan under the Program shall not pledge the faith, credit, or taxing power of the VSBFA or the Program. Any assurances, guarantees, or other credit enhancements provided under the Program do not pledge the faith, credit, or taxing power of the VSBFA or the Program, and such enhancements are payable only to the extent of the Reserve Fund.

Article V: Use of the Reserve Fund

Section 5.1 Payments and Transfers to the Reserve Fund

The Lender shall set the premium charges payable to the Reserve Fund by the Lender and the Borrower in connection with an Eligible Loan being filed for enrollment with the VSBFA pursuant to Section 4.2. The amount paid by the Borrower and Lender shall not be less than 2.0% of the amount of the Enrolled Loan and shall not be greater than 7.0% of the amount of the Enrolled Loan. The amount paid by the Lender shall be equal to the amount paid by the Borrower. The Lender may recover from the Borrower the cost of the Lender's payment of the premium charges described in this Section in any manner in which the

Lender and Borrower agree. When enrolling an Eligible Loan under Article IV, the VSBFA shall transfer into the Reserve Fund an amount determined as follows:

- a) An amount that is not less than the combined amounts paid into the Reserve Fund by the Borrower and the Lender for each Enrolled Loan.
- b) The VSBFA may limit the maximum loan size of an Enrolled Loan or the maximum amount the VSBFA will transfer to the Reserve Fund with respect to any one Borrower. Notwithstanding the foregoing, the VSBFA shall not limit the maximum Enrolled Loan size to less than \$500,000 nor limit the maximum amount transferred by the VSBFA to the Reserve Fund with respect to any one Borrower to less than \$35,000.

Section 5.2 Ownership, Control and Investments of Reserve Fund

All funds credited to the Reserve Fund shall be the exclusive property of, and solely controlled by, the VSBFA. The VSBFA may not withdraw funds from the Reserve Fund except as provided for in this Agreement.

Interest or income earned on the funds credited to the Reserve Fund shall be deemed to be part of the Reserve Fund. The VSBFA is authorized to withdraw at any time from the Reserve Fund up to fifty (50%) percent of the total interest or income that has been credited to the Reserve Fund since the date of the first Enrolled Loan. Withdrawals authorized under this section need not be returned to the Reserve Fund.

The VSBFA shall, upon reasonable request of the Lender, periodically provide to the Lender transaction reports indicating the balance in the Reserve Fund, payments and transfers into the Reserve Fund, withdrawals from the Reserve Fund, and interest or income earned on funds credited to the Reserve Fund. In addition, the foregoing transaction reports shall be available to the Lender for inspection at the offices of the VSBFA during normal business hours.

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 the VSBFA by submitting a completed claim form in the form attached as Exhibit 5 bearing the execution signature of an authorized officer of the Lender.

Any Claim that is filed under this Agreement shall be filed within 120 days of the action of the Lender to charge off all or part of the Enrolled Loan. The Lender shall determine when and how much to charge off of an Enrolled Loan in a manner consistent with its normal method for making such determinations on business loans which are not Enrolled Loans.

The Lender's Claim may include the amount of principal charged off, plus up to ninety (90) days' accrued interest, and an amount which represents Lender's customary and reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including preservation of any collateral. However, in the event that only a portion of the amount of the Enrolled Loan is enrolled in the Program, reimbursement of interest and out-of-pocket expenses will be limited to the ratio of the enrolled portion of the Enrolled Loan to the total amount of the Enrolled Loan. The Lender shall retain documentation in its files evidencing all expenses for which a Claim is filed. The amount of principal, accrued interest and out-of-pocket expenses included in the Claim shall not exceed the principal amount covered under the Program upon enrollment.

Section 5.4 Disbursement of Reserve Fund

Notwithstanding the violation of any other provision of this Agreement by the Lender, upon receipt by the VSBFA of a Claim filed by the Lender in accordance with Section 5.3, the VSBFA shall promptly pay, from funds in the Reserve Fund, the Claim as submitted, except that the VSBFA may reject a Claim when the representations and warranties provided by the Lender in Section 2.2 were known by the Lender to be false when the Eligible Loan became an Enrolled Loan.

If there are insufficient funds in the Reserve Fund to cover the entire amount of the Lender's Claim, the VSBFA shall pay to the Lender an amount equal to the current balance in the Reserve Fund, net of interest to which the VSBFA is entitled to under this Agreement. That payment shall be deemed to satisfy the Claim made with the VSBFA and the Lender shall have no other or further right to receive any amount from the Reserve Fund with respect to that Claim, provided that during the 2 years following the date of such payment, Lender shall be entitled to claim and receive funds subsequently deposited into the Reserve Fund (the "Follow-up Claim") on account of such claim so long as the amount of the Follow-up Claim does not exceed 75% of the amount then on deposit in the Reserve Fund. The Follow-up Claim shall be in the form of Exhibit 6 attached hereto. Notwithstanding anything to the contrary herein, nothing in this provision shall limit or constitute a waiver or subrogation of any rights Lender may have against a Borrower, any other obligor or any collateral pursuant to the terms of the loan

documents between the Borrower and the Lender relating to the portion of the Claim not paid from the Reserve Fund as a result of the Reserve Fund having insufficient funds available to fully satisfy the Claim.

Section 5.5 Recovery by Lender Subsequent to Claim

a) If after payment of a Claim by the VSBFA, the Lender recovers from a Borrower any amount for which payment of the Claim was made, the Lender shall promptly pay to the VSBFA for deposit in the Reserve Fund an amount recovered equal to the payment received from the VSBFA for the Claim, less the Lender's customary and reasonable out-of-pocket expenses. The Lender shall retain documentation in its files evidencing those expenses. Notwithstanding anything to the contrary herein, Lender shall be required to make the foregoing payment solely to the extent that the amount recovered by Lender from the Borrower for an Enrolled Loan for which Lender made a Claim, when added to the payments received by Lender under such Claim, exceeds Lender's loss on such Enrolled Loan.

b) For the purposes of this Section and Section 5.4, the Lender's loss on an Enrolled Loan may include loss of principal up to the enrolled amount and up to 90 days accrued but unpaid interest on the enrolled principal balance, plus an amount which represents Lender's documented customary and reasonable out-of-pocket expenses incurred in pursuing its collection efforts with respect to the enrolled portion of any loan, including preservation of any collateral.

c) The Lender's recovery of any amount written-off in connection with any loan that is not an Enrolled Loan made to a borrower, whether or not such borrower is participating in the Program, shall not be paid to the VSBFA for deposit in the Reserve Fund.

Section 5.6 Non-Enrolled Loans to Borrowers

In the event that a Lender has outstanding (a) an Enrolled Loan with a Borrower and (b) other credit, including the unenrolled portion of an Enrolled loan, not covered by the Program with the same Borrower, the Enrolled Loan shall be deemed to be subordinate to the other credit not covered by the Program.

Article VI: Reporting

Section 6.1 Quarterly Summary Reports

On or before the 30th day of the month following the end of each calendar quarter, the Lender shall submit to the VSBFA a report of all Enrolled Loans and the outstanding balances of such Enrolled Loans, the current balance of the Reserve Fund, charge-offs and recoveries on Enrolled Loans in the immediately preceding calendar quarter. In computing the aggregate outstanding balance of all Enrolled Loans, the balance of any loan shall in no event be considered to be greater than the covered amount of the loan enrolled and, in the case of lines of credit, the outstanding balance shall be considered to be the enrolled line amount.

Section 6.2 Late Reporting

If a report required under Article VI is not filed within 30 calendar days beyond the required due date therefore, the VSBFA may conduct an inspection of the Lender's files pursuant to Section 10.3, with the reasonable costs thereof to be borne by the Lender.

Section 6.3 Forms

Reports required under this Article shall be substantially in the form(s) of Exhibit 7 attached hereto.

Article VII: Withdrawal of Excess Reserve Funds

Section 7.1

If reports filed pursuant to Article VI indicate that for the immediately preceding twenty-four (24) month period the balance in the Reserve Fund continually exceeded the aggregate outstanding balance of all Enrolled Loans, the VSBFA may withdraw from the Reserve Fund an amount not greater than the amount by which the Reserve Fund balance exceeded the aggregate outstanding balance of all Enrolled Loans as of the most recent report, unless the Lender has provided to the VSBFA 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.

Article VIII: Termination

Section 8.1

The VSBFA may, in its sole discretion, terminate its obligations under this Agreement to enroll Eligible Loans under the Program. The termination shall be applicable on the effective date specified in the notice of termination, except that the termination shall not apply to any Eligible Loan which is made on or before the date on which the notice of termination is received by the Lender. However, if the VSBFA is terminating the enrollment of Eligible Loans not merely for the Lender but instead for all participating lenders under the Program, the VSBFA 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 Enrolled Loans existing prior to the date of any such termination by the VSBFA, except that if a previously Enrolled Loan is refinanced, the amount covered under the Program shall not be increased beyond the covered amount of the previously Enrolled Loan.

Section 8.2

If the VSBFA has terminated its obligations under this Agreement in accordance with Section 8.1, the VSBFA may withdraw the balance of the Reserve Fund once there are no Enrolled Loans under the Program.

Section 8.3

Notwithstanding the VSBFA's termination of its obligation to enroll Eligible Loans under the Program, the Lender's obligation to submit reports pursuant to Article VI shall continue as long as the Lender is pursuing recovery efforts with respect to Enrolled Loans.

Article IX: Pledge of the Reserve Fund

The VSBFA pledges the funds in the Reserve Fund to be available to pay Claims pursuant to Section 5.3. The VSBFA further pledges that the Lender shall have a first security interest in the funds in the Reserve Fund to pay Claims pursuant to Section 5.3 and the VSBFA will not encumber or pledge the funds to any other party. This pledge does not, however, diminish the ownership or control of the Reserve Fund granted to the VSBFA in Section 5.2, and it shall not affect the VSBFA's right to withdraw funds from the Reserve Fund pursuant to Section 5.2, Article VII or Article VIII.

Article X: Miscellaneous

Section 10.1 Amendments to Agreement

This Agreement may only be amended upon the written consent of both the VSBFA and the Lender.

Section 10.2 Information

The Lender shall provide the VSBFA with the information regarding its participation in the Program as the VSBFA may reasonably require.

Section 10.3 Inspection of Files

Upon notice to the Lender, the VSBFA may inspect the files of the Lender relating to any loans enrolled under the Program, during normal business hours of the Lender. The VSBFA will not copy or extract any information from such files unless (a) the information is eligible for protection from disclosure pursuant to applicable federal or state statutes, in which case the VSBFA agrees to invoke the confidentiality provisions of the statute or (b) if such information cannot be protected, the consent of the Borrower has been obtained.

Section 10.4 U.S. Treasury Inspector General

The Lender agrees to make available to the Inspector General for the United States Department of the Treasury all books and records related to Enrolled Loans, subject to the Right to Financial Privacy Act (12 U.S.C. § 3401 *et seq.*).

Section 10.5 External Audit

The VSBFA may select an outside auditor to audit not more often than annually the Lender’s files for loans and other documents under the Program. The VSBFA shall be responsible for the expenses and costs of the outside auditor under this section. The VSBFA shall use its best efforts to coordinate its audit of the Lender’s files with other states’ capital access programs in which the Lender participates, and, upon the VSBFA’s request therefore, the Lender shall provide a listing of the other State Caps in which the Lender participates.

Section 10.6 Compliance with Applicable Law

The Lender shall comply with all applicable state and federal laws, rules and regulations.

Section 10.7 Limitation of Rights

This Agreement shall be for the exclusive benefit of the Lender and the VSBFA, and shall not be construed to give any other person any legal or equitable right, remedy or claim with respect to the Agreement.

Section 10.8 Severability

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

Section 10.9 Notices

All notices, certificates, requests or other communications shall be deemed 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 the VSBFA: Scott E Parsons, Executive Director
Virginia Small Business Financing Authority
101 North 14th Street – 11th Floor, P.O. Box 446, Richmond, VA 23218-0446

If to the Lender by mail: _____

Section 10.10 Binding Effect

This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 10.11 Reports of Regulatory Agencies

The Lender consents to the transmittal to the VSBFA, by any financial institutions regulatory agency of the federal or state governments, any information directly relating to the Lender’s participation in the Program. To the extent permitted by law, the VSBFA shall hold any information acquired pursuant to this Section confidential.

Section 10.12 No Personal Liability

No member, officer or employee of the VSBFA, 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 10.13 Collateral

VSBFA shall have no legal or equitable interest in any collateral, security, or other right of recovery in connection with any loan enrolled in the Program and, thus, the VSBFA’s consent is not necessary for any amendment to the Lender’s loan documents. Moreover, no provision in this Agreement shall be construed to prohibit or restrict the Lender’s authority, in its sole discretion, to modify the terms or conditions of an Enrolled Loan in a manner that does not conflict with this Agreement. This Section shall not, however, permit Lender to modify its obligation to make payments to the Reserve Fund pursuant to Section 5.5.

Section 10.14 Due Diligence

Within the context of the objectives of the Program, the Lender agrees to exercise the same degree of care and diligence in the making and collection of the Enrolled Loans as it does in the making and collection of other business loans in the ordinary course of Lender’s business.

Section 10.15. Captions

The captions in this Agreement are of convenience only and in no way limit the scope of intent of any provision of this Agreement.

Section 10.16. Interpretation

This Agreement shall be governed by and interpreted in accordance with the laws of the Virginia.

Section 10.17. Entire Agreement

This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

WITNESS the due execution hereof as a document under seal, as of the date first written above.

Virginia Small Business Financing Authority

By: _____

Print Name: Scott E. Parsons

Title: Executive Director

Date: _____

[Name of Lender]

By: _____

Print Name: _____

Title: _____

Date: _____