**GEORGIA STATE SMALL BUSINESS CREDIT INITIATIVE (SSBCI)**

**Agreement No.**

**LENDER PROGRAM PARTICIPATION AGREEMENT**

**SMALL BUSINESS CREDIT GUARANTEE PROGRAM**

**(“SMALL BUSINESS CREDIT GUARANTY PROGRAM or “SBCG Program”)**

**between**

**ghfa Economic Development Financing, Inc.**

**and**

**(PARTICIPATING LENDER NAME)**

**(PARTICIPATING LENDER ADDRESS)**

**(PARTICIPATING LENDER CITY/STATE/ZIP + 4)**

**ATTN:**

**(PARTICIPATING LENDER CONTACT / TITLE)**

**PHONE:**

**(PARTICIPATING LENDER)**

**FAX:**

**(PARTICIPATING LENDER)**

state of georgia

georgia STATE small business credit INitiative

lender PROGRAM PARTICIPATION AGREEMENT

(SMALL BUSINESS CREDIT GUARANTY program)

This **PROGRAM PARTICIPATION AGREEMENT** **(SMALL BUSINESS CREDIT GUARANTY PROGRAM)** (the "Agreement") is entered into this  day of , , by and between the **Ghfa ECONOMIC DEVELOPMENT FINANCING, INC.** ("GHFA EDFI"), a public body corporate and politic and instrumentality of the State of Georgia, and , a/an  (the "Lender") as part of the implementation of the Small Business Credit Guaranty Program implemented under the Georgia State Small Business Credit Initiative.

RECITALS

WHEREAS:

A. The Small Business Jobs Act of 2010 (the "Act") was federal legislation that created the State Small Business Credit Initiative ("SSBCI"), which sought to increase credit availability for small businesses through the appropriation of federal funds to participating states to use in programs that increase credit access for small businesses.

B. The State of Georgia (the "State") determined that, in order to promote economic development and help create jobs for its citizens, the State needs to assist small businesses located in the State by providing access to capital that State small businesses otherwise may not obtain.

C. To provide State small businesses with additional access to capital, the State applied for and was awarded federal funds from the United States Department of Treasury ("Treasury") for SSBCI-related programs administered by or on behalf of the State.

D. The State designated GHFA EDFI with the responsibility to (i) administer the federal funds received from SSBCI in accordance with Treasury rules and regulations, and (ii) assist small businesses with access to credit in order to create jobs and improve the State's economy for its citizens.

E. The agreement with Treasury expired March 31, 2017 at which time the SSBCI funds remaining became a State-administered program. Lender has been duly selected by the State as a participating lender in the Small Business Credit Guaranty Program.

F. GHFA EDFI and the Lender desire to set forth certain terms and conditions upon which the Lender may enroll eligible credits into the Small Business Credit Guaranty Program administered by GHFA EDFI as part of the Georgia SSBCI Programs whereby the Lender has a 50% guaranty on eligible enrolled loans.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, other good and valuable consideration the receipt and sufficiency of which the parties hereby acknowledge, and intending to be legally bound hereby, the parties hereto agree as follows:

# DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, each of the following words and terms as used in this Agreement shall have the following meaning, unless the context or use clearly 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 context may require:

"Affiliate" means, when describing a relationship with the Lender, the parent company of Lender, or any present or future company that controls, is controlled by, or is under common control with Lender as defined under 12 U.S.C. § 1841(d). For purposes of describing a relationship with the Borrower, the term "affiliate" means an individual or entity which is in a position to exert direct influence on the actions of another person or entity (which persons or entities shall be deemed "control persons" or a "control person"). For purposes of this definition, the term control person shall include, without limitation, persons who are owners of 10% or more of the voting shares or other ownership interests of another entity, and persons who are directors, and senior elected officers and any other persons or entities in a position to exert influence through such directors and senior elected officials of another entity (such as members of a control person’s immediate family and other close associates).

"Borrower" means the recipient of a loan, which is, has been, or will be filed by the Lender for enrollment under the Small Business Credit Guaranty Program and is a State business which has 500 or fewer employees as employees are defined in 13 C.F.R. § 121.106.

"Concentration Limit" means the maximum combined Current Credit Guaranty Exposure Amount which may be outstanding at any one time with the Lender which, for all purposes, shall be $5,000,000 unless waived, in writing, by GHFA EDFI or its designee. For purposes of clarification, the Concentration Limit shall be measured only on the amount of guaranty liability in respect of the outstanding principal balances or maximum line of credit balances of Enrolled Loans which are covered by the Loan Guaranty, and not on the total loan balances which are not covered by the guaranty provided under the Loan Guaranty (e.g., the portions of the Enrolled Loans and/or the direct loans and/or the third-party loans extended to the Borrower which are not guaranteed by GHFA EDFI under the Loan Guaranty.

"Current Credit Guaranty Exposure Amount" means with respect to Enrolled Loans covered by the Loan Guaranty (i) 50% of the then outstanding principal amount in respect of any Enrolled Loan which is not a line of credit, calculated on each anniversary of the closing on the related Enrolled Loan, and (ii) 50% of an Enrolled Loan which is in the form of a line of credit. By way of illustration only, if the Lender has an Enrolled Loan with an initial loan balance of $1,000,000 at the time of closing ("Loan A"), the Current Credit Guaranty Exposure Amount for Loan A would be $500,000 while Loan A remains an Enrolled Loan. If, at the end of year 3 of Loan A, the outstanding balance is $500,000, and said loan remains an Enrolled Loan covered by the Loan Guaranty, the Current Credit Guaranty Exposure Amount for Loan A would be $250,000.

"Eligible Loan" means a loan or line of credit made by the Lender to a Borrower for which the representations and warranties as set forth in Section 2.2 are true.

"Enrolled Loan" means a loan or line of credit made by the Lender to a Borrower that is approved under the State Business Credit Guaranty Program in accordance with this Agreement.

"Georgia Open Records Act" means O.C.G.A. § 50-18-70, et seq.

"Initial Credit Guaranty Exposure Amount" means (i) 50% of the original principal amount in respect of any Enrolled Loan which is not a line of credit and (ii) 50% of the maximum credit limit initially made available to a Borrower on an Enrolled Loan which is in the form of a line of credit.

"Loan" or "loan" means, for all purposes of this Agreement, a loan or line of credit made by the Lender to a Borrower for which the Lender seeks to enroll in the Small Business Credit Guaranty Program, unless the context clearly indicates otherwise.

"Loan Guaranty" means a 50% limited guaranty obligation for Enrolled Loans held by the Lender.

"Loan Documents" means the written documentation evidencing that an Enrolled Loan from the Lender to a Borrower is covered under the State Business Credit Guaranty Program described herein and includes, but is not limited to, the Enrollment Form, loan or credit agreement, note, mortgage, security agreement and any guaranty agreement or other documents relating to the Enrolled Loan or the security therefor.

"Lobbying Activities" means the definition ascribed to lobbying activities by the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

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

"Maximum Enrolled Loan Amount" means the maximum aggregate principal amount of any loan which may be enrolled under the Small Business Credit Guaranty Program. Currently, the Maximum Enrolled Loan Amount is $1,000,000; provided, however that: (i) GHFA EDFI reserves the right, acting in its sole and absolute discretion, to modify the Maximum Enrolled Loan Amount upon publication of notice of same to the Lender; and (ii) GHFA EDFI reserves the right to increase said Maximum Enrolled Loan Amount on a case-by-case, exception only basis, with the written approval of DCA as and to the extent such increased guaranty amount would not trigger a violation of the applicable state laws and regulations. For purposes of clarification, under no circumstances shall the aggregate amount of any loan or group of loans made by a Lender to a Borrower and the Borrower's Affiliates exceed said $1,000,000 Maximum Enrolled Loan Amount on an aggregate basis without the written consent of GHFA EDFI.

"Maximum Guaranty Amount" shall have the meaning set forth in Section 4.4 of this Agreement.

"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: (a) 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 (b) ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

"Small Business Credit Guaranty Program" means that certain program referred to as the Small Business Credit Guaranty Program, as approved by the State, and which is the subject of this Agreement.

"Underserved Borrower" means a Borrower, which:

### is located in a municipality or county located in the State that, according to the most recently available United States Department of Housing and Urban Development-adjusted census data, is comprised of more than fifty percent (50.0%) low- to moderate-income residents; or

### is located in a "minority census tract" as such term is defined in 12 U.S.C. § 4502(29) or in a Low-to Moderate-Income Area; or

### has more than fifty percent (50.0%) of the Borrower's stock, partnership interests, membership interests or other equity ownership interests owned solely by or by any combination of individuals who are women, black, African-American, American Indians, Alaska natives, Asians, native Hawaiians, other Pacific Islanders and/or Hispanics; or

### is located within "distressed nonmetropolitan middle-income geographies" or "underserved nonmetropolitan middle-income geographies" as such geographies are designated upon enrollment of a loan to the Borrower by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision pursuant to the federal Community Reinvestment Act as amended.

# REPRESENTATIONS

## Representations by GHFA EDFI. With respect to any loan enrolled hereunder, GHFA EDFI covenants and represents that, as of the time of such enrollment, GHFA EDFI has the necessary power, and has duly taken all actions 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 GHFA EDFI will not violate or conflict with any instrument by which GHFA EDFI is bound.

## Representations by the Lender. With respect to any loan that the Lender files for enrollment hereunder, the Lender makes the following representations and warranties as of the time of each such filing and enrollment:

### The Lender has obtained from the Borrower the following representations and warranties, and, based on knowledge that the Lender has after reasonable inquiry, the Lender has no substantial reason to believe that such representations and warranties are not true:

#### The Borrower is a corporation, partnership, limited liability company, limited liability partnership, joint venture, sole proprietorship, cooperative, or other entity, which is authorized to conduct business in the State, and the proceeds of the loan will be used for a business purpose, which includes, but is not limited to, start-up costs, working capital, business procurement, franchise fees, equipment, inventory, lines of credit, buildings or other real estate improvements for an industrial, commercial or other business enterprise that is not for Passive Real Estate Ownership, or any combination thereof, generally within the state as described below; however, a business purpose shall specifically exclude acquiring or holding passive investments such as Passive Real Estate Ownership, the purchase of securities and Lobbying Activities.  If proceeds of the loan are for buildings or other real estate improvements, the real estate must be located in Georgia.  If proceeds of the loan are for franchise fees, the business for which the fees are paid must be located in Georgia.  If proceeds of the loan are for equipment, the equipment must be installed or titled in Georgia.  If the proceeds of the loan are for start-up costs, working capital, business procurement, inventory, or any other costs, the proceeds must be used to directly benefit a business within the state of Georgia. However, nothing in this Agreement shall prohibit a business from using the proceeds of the loan to purchase inventory, equipment, or otherwise making purchases and payments from/to businesses or persons outside of the state of Georgia, provided that the purchases inure to the benefit of a business located within the state of Georgia. Notwithstanding anything in this Section, GHFA EDFI reserves the right to approve any loan through which funds will be expended in a state other than Georgia, and furthermore may request any and all documents from the borrower necessary to verify the amount of funds and purpose of funds expended outside of the state of Georgia.[[1]](#footnote-1)

#### The loan will not be used to refinance any of the Borrower's existing obligation(s) to the Lender or its Affiliates.

#### The loan will not be used to (1) repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority, (2) repay taxes held in trust or escrow including, but not limited to, payroll or sales taxes, (3) reimburse funds owed to any owner, including any equity injection or injection of capital for the continuance of the Borrower's business, or (4) purchase any portion of the ownership interest of any owner of the Borrower's business.

#### No officer, director, or shareholder is 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.

#### The Borrower is not a business engaged in speculative activities that develops profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless such activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business.

#### The Borrower is not a business that earns more than half of its annual net revenue from lending activities unless the Borrower is a non-bank or non-bank holding company certified as a Community Development Financial Institution.

#### The Borrower is not 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.

#### The Borrower is not 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, but not limited to, a business engaged in the production, servicing, or distribution of otherwise legal products that are used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution.

#### The Borrower is not a business engaged in gambling enterprises, unless the business earns less than thirty-three percent (33.0%) of its annual net revenue from lottery sales.

#### Neither the Borrower nor a 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 in 42 U.S.C. 16911). For purposes of this representation and warranty, "principal" is defined as (a) if a sole proprietorship, the proprietor, (b) if a partnership, each managing partner and each partner who is a natural person and holds a twenty percent (20.0%) or more ownership interests in the partnership, and (c) if a corporation, limited liability company, association or other business entity, each director, each of the five (5) most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of twenty percent (20.0%) or more of the stock or equivalent ownership interests of such business entity.

#### That the enrollment of the loan by the Lender will not violate the Maximum Enrolled Loan Amount limitation.

### The Lender further represents and warrants as follows:

#### That the Enrolled Loan or Loans have not been made in order to place under the protection of the Georgia SSBCI Programs any prior debt that is not covered under the Georgia SSBCI Programs and that is or was owed by the Borrower to the Lender or its Affiliate.

#### That the Lender is and shall at all times remain in compliance with the requirements of section 103.121 of Title 31, U.S.C., which regulation, at a minimum, requires financial institutions, as that term is defined in section 5312 (a)(2) and (c)(1)(A) of Title 31, U.S.C., to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person’s identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

#### That the Lender has disclosed to the Borrower information concerning the Small Business Credit Guaranty Program (or any other Georgia SSBCI Programs) as may be specified by GHFA EDFI.

#### That the Lender will exercise its standard due diligence in applying underwriting criteria and evaluating underwriting results for purposes of determining whether the Enrolled Loan or Loans shall be made by the Lender to the Borrower.

#### That the Lender has complied or will comply with all State, federal and local laws, rules and regulations pertaining to the making of the Enrolled Loan or Loans and that it is current as to the filing and payment of any federal, State and/or local taxes applicable to Lender; and is not delinquent in its payment of moneys owed to any federal, State, or local unit of government.

#### That the Lender has not enrolled a loan for the unguaranteed portions of Small Business Administration (SBA) guaranteed or other federally guaranteed loans.

#### That the Lender is a .

#### That the Lender is familiar with all of the laws, rules and regulations applicable to the Georgia SSBCI Programs (particularly the Small Business Credit Guaranty Program) and shall use diligent, reasonable efforts to remain familiar with all such rules and regulations applicable to the Georgia SSBCI Programs (particularly the Small Business Credit Guaranty Program), including, but not limited to, any changes in lending limitations, information gathering and reporting requirements and other program matters, and promptly shall notify the GHFA EDFI of such changes of which the Lender becomes aware during the term of this Agreement

#### That the Lender is a validly existing and in good standing under the laws of the , is duly qualified and in good standing to transact business in the State, and possesses all requisite authority, power, licenses, permits and franchises to conduct any and all business contemplated by this Agreement and to accept the duties hereunder and comply with its obligations under the terms of this Agreement. It further certifies, covenants and represents that the execution and delivery and performance of this Agreement by the Lender has been duly authorized by all necessary corporate action.

#### That this Agreement, and all documents and instruments contemplated hereby, which are executed and delivered by it, when duly authorized, executed and delivered by all other parties thereto, will constitute valid, legal and binding obligations of the Lender, enforceable against it in accordance with their respective terms, except as the enforcement thereof may be limited by applicable debtor relief laws.

#### That the execution and delivery of this Agreement by Lender and the performance and compliance with the terms hereof by it in the manner contemplated herein will not violate (i) its articles of incorporation or bylaws, or (ii) any laws which could have any material adverse effect whatsoever upon the validity, performance or enforceability of any of the terms of this Agreement or any financing documents applicable to the Lender, and will not constitute a material default (or an event which, with notice or lapse of time, or both, would constitute a material default) under, or result in the breach of, any material contract, agreement or other instrument to which the Lender is a party or which may be applicable to it or any of its assets.

#### That the execution and delivery of this Agreement by the Lender and the performance and compliance with the terms hereof by it in the manner contemplated herein do not require the consent or approval of any governmental authority, or if such consent or approval is required, it has been obtained.

#### That the Lender, in the performance of its duties hereunder, will comply with the applicable non-discrimination provisions of the Civil Rights Act of 1964, and the regulations promulgated thereunder, and Executive Order 11246, Equal Employment Opportunity.

#### That so long as it shall continue to serve in the capacity contemplated under the terms of this Agreement, the Lender will remain in good standing under the laws governing its organization and qualified under the laws of the State to do business in the State, will not dissolve or otherwise dispose of all or substantially all of its assets and will not voluntarily consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it; provided, however, that the Lender may, without violating the covenant contained in this provision consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer to another such entity all or substantially all of its assets as an entirety and thereafter dissolve, if the surviving, resulting or transferee entity, as the case may be, shall have a net worth equal to or greater than the net worth of the Lender immediately preceding any such merger, consolidation or sale of assets, shall be qualified under the laws of the State to do business in the State, shall be qualified under the laws and have all necessary approvals as a , as evidenced to the satisfaction of the State, required of the Lender to perform its duties under this Agreement, and shall assume in writing all of the obligations of the Lender under this Agreement, in which event the GHFA EDFI shall release the Lender in writing, concurrently with and contingent upon such assumptions from all obligations so assumed.

#### That no information or statement furnished in writing or report required hereunder delivered to GHFA EDFI or the State (or any of their respective agents or designees) has or will, to the knowledge of the Lender, contain any untrue statement of a material fact or omit a material fact necessary to make the information, statements or report not misleading.

#### That on the date hereof, there is no pending, or to Lender's knowledge, threatened litigation or administrative proceedings against Lender, which, if adversely determined, would materially affect Lender and its assets or its ability to perform the services contemplated in this Agreement.

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

#### That the Lender is in compliance with the requirements of the federal Drug Free Workplace Act.

#### That the Lender is not currently operating under or subject to any formal regulatory action such as a cease and desist order (or consent order), issued by a Federal or State agency charged with the regulation of financial institutions.

#### That the Lender has fully and truthfully disclosed on its application any formal supervisory enforcement action which it is subject to. The Lender further represents that it will notify GHFA EDFI, in writing, within ten days, if it becomes subject to a formal enforcement action. Failure to disclose any and all enforcement actions issued against Lender may constitute a default under this agreement.

# ENROLLMENT OF LOANS IN SMALL BUSINESS CREDIT GUARANTY PROGRAM; WITHDRAWAL

## Loans. A loan to be filed for enrollment under this Agreement may be made with such interest rate, fees, and other terms and conditions as the Lender and Borrower may agree. The loan may be in the form of a line of credit, in which case the amount of the loan shall be considered to be the maximum amount that can be drawn down against the line of credit. Notwithstanding the foregoing, the term of the coverage provided by GHFA EDFI for any Enrolled Loan shall not exceed 60 months for any term or amortizing loan or 24 months for any line of credit.

## Enrollment.

### In order to enroll a loan under the Small Business Credit Guaranty Program, the Lender shall (i) file the loan for enrollment by causing to be delivered to GHFA EDFI a copy of the Enrollment Form as may be specified by GHFA EDFI, bearing an execution signature of an authorized officer of the Lender, and (ii) submit such additional documentation and information reasonably required by GHFA EDFI and related to the loan to be enrolled. The loan shall be deemed enrolled in the Small Business Credit Guaranty Program at such time as the Enrollment Form is accepted, in writing, by GHFA EDFI as evidenced by GHFA EDFI's (or its designee's) signature on the approval line of the Enrollment Form.

### The Lender shall file the loan for enrollment with GHFA EDFI before the Lender advances funds under the loan or the line of credit. For the purposes of this Agreement, the date on which the Lender makes a loan or opens the line of credit shall be deemed to be the earlier to occur of the date on which the Lender (i) first disburses proceeds of the loan to the Borrower, or (ii) first permits the Borrower to make draws on the line of credit, or (iii) has executed and delivered Loan Documents. 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 executes and delivers the Enrollment Form and delivers to GHFA EDFI the documentation as required by this Section.

### The Lender shall execute any and all documentation reasonably requested by GHFA EDFI to memorialize the terms and conditions of any loan enrolled by the Lender in the Small Business Credit Guaranty Program and/or the guaranty extended by GHFA EDFI for any such Enrolled Loan.

## Acknowledgment. Upon receipt by GHFA EDFI of the documentation identified in Section 3.2 hereof and approval by GHFA EDFI, GHFA EDFI shall enroll the loan, unless the information provided pursuant to Section 3.2 indicates or GHFA EDFI reasonably believes that the loan is not an Eligible Loan, and shall mail or otherwise deliver to the Lender, an acknowledgment of enrollment, bearing the execution signature of an authorized representative of GHFA EDFI, and including documentation of the guaranty obligation being extended by GHFA EDFI to the Lender in respect of such Enrolled Loan. Notwithstanding the provisions of this Section 3.3, GHFA EDFI is under no obligation to accept loans for enrollment in the Small Business Credit Guaranty Program if GHFA EDFI does not have sufficient funds needed to fully fund future guaranty obligations in respect of Enrolled Loan commitments.

## Portions of Loans. When filing a loan for enrollment, the Lender may specify an amount to be covered under the Small Business Credit Guaranty 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.

## Renewal of Enrolled Loans. In the event that an Enrolled Loan is renewed, and the total amount to be covered under the Small Business Credit Guaranty Program does not exceed the covered amount of the loan as previously enrolled, the loan, as renewed, may continue as an Enrolled Loan if approved by GHFA EDFI. The Lender shall pay to GHFA EDFI, at the closing, the applicable processing fee in place at the time of renewal. Renewals must be processed within 10 business days after the date of maturity in order for consideration for renewal. Loans will be automatically un-enrolled from the program if a renewal request is not received within the 10 business-day grace period.

## Renewal and Increase of Enrolled Loans. In the event that an Enrolled Loan is renewed in an amount that exceeds the amount covered when the loan was previously enrolled,

### the Lender shall again file the loan for enrollment pursuant to Section 3.2;

### the Lender at the time of such renewal shall be deemed to have made, with respect to such renewed loan, the representations and warranties specified for the Lender in Section 2.2(a) and Section 2.2(b) hereof; and

(c) the Lender shall pay to GHFA EDFI, at the closing, the applicable processing fee in addition to the applicable renewal fees for (i) the portion of the Enrolled Loan which is equal to the covered amount outstanding at the time of renewal of the prior Enrolled Loan (calculated as set forth in Section 3.5 above), and (ii) the portion of the Enrolled Loan which constitutes an increase in the covered amount of the prior Enrolled Loan at the time of the renewal (the "New Enrolled Loan Amount") (calculated in the same manner as the Initial Guaranty Fee set forth in Section 4.2 hereof and based on the New Enrolled Loan Amount).

## Line of Credit Fluctuations. For the purposes of this Agreement, fluctuations in the outstanding balance of a line of credit, without increasing the covered amount under the Small Business Credit Guaranty Program, shall not be deemed to be a refinancing of the loan.

## Line of Credit Renewals. To renew an Enrolled Loan which is a line of credit, or extend the maturity date of such line of credit, the Lender must advise and the Borrower consent to such extension in writing and the GHFA EDFI must receive a new enrollment. Otherwise, an Enrolled Loan which is a line of credit is considered no longer enrolled in the Small Business Credit Guaranty Program after the maturity date of the line of credit, as indicated on the enrollment form, has passed. Renewals must be processed within 10 business days after the date of maturity in order for consideration for renewal. Loans will be automatically un-enrolled from the program if a renewal request is not received within the 10 business-day grace period.

## Zero Balances. 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 six (6) month period, such line of credit shall no longer be considered an Enrolled Loan, unless before the expiration of the six (6) 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.

## Reporting Requirements.  For each calendar quarter, the Lender is to submit to the GHFA EDFI within 10 days of the most recent calendar quarter-end a report listing Borrowers and outstanding balances of all Enrolled Loans as of the end of that preceding calendar quarter; provided, however, GHFA EDFI reserves the right to supplement the Lender's quarterly reporting requirements at any time.   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 as enrolled and, in the case of lines of credit, the total line of credit amount shall be considered to be the enrolled line amount.  Notwithstanding the foregoing, GHFA EDFI reserves the right to supplement the reporting requirements and/or to require interim reports as may be required for GHFA EDFI to remain in compliance with the laws, rules and regulations, as amended from time to time, of the State relating to the SSBCI program.

## Termination of Enrollment Rights under the Program. GHFA EDFI, in its sole and absolute discretion, may terminate its obligation under this Agreement with the Lender to enroll loans under the Small Business Credit Guaranty Program. Such termination may be temporary (e.g., in the case where the Lender reaches the Concentration Limit) or permanent and shall be applicable on the effective date specified in the written 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. Any terminations under this Section shall be prospective only, and shall not apply to any loans previously enrolled under the Small Business Credit Guaranty Program, except that if a previously Enrolled Loan is refinanced, the amount covered under the Small Business Credit Guaranty Program shall not be increased beyond the covered amount as previously enrolled after the effective date of termination. For purposes of clarification, nothing herein provided is intended, nor shall it be construed, to modify, limit or restrict the GHFA EDFI's or State’s termination rights and remedies upon the occurrence of an event of a default (as provided herein), which provisions shall expressly control.

## Lender's Withdrawal from Program. The Lender may withdraw from the Small Business Credit Guaranty Program at any time with prior written notice to GHFA EDFI. Such withdrawal shall be applicable on the effective date specified in the written notice of withdrawal, except that such withdrawal shall not apply to any loan which is made on or before the date on which the notice of withdrawal is received by GHFA EDFI. Any withdrawals under this Section shall be prospective only, and shall not apply to any loans previously enrolled under the Small Business Credit Guaranty Program.

# LENDER GUARANTY PROGRAM AND RELATED PROVISIONS

## Small Business Credit Guaranty Program. Lender may enroll a loan in the Small Business Credit Guaranty Program by complying with (i) the enrollment procedures set forth in Article III hereinabove and (ii) the terms and conditions of the Small Business Credit Guaranty Program set forth in this Article IV.

## Loan Guaranty Fee. For each loan enrolled by Lender in the Small Business Credit Guaranty Program, Lender shall pay GHFA EDFI a processing fee and an initial fee equal to two percent (2.0%) of the Initial Credit Guaranty Exposure Amount relating to each loan enrolled by Lender in the Small Business Credit Guaranty Program (the "Initial Guaranty Fee"). For loans, the Initial Guaranty Fee shall be paid by the Lender to GHFA EDFI at or before the closing on the loan which is enrolled in the Small Business Credit Guaranty Program. In addition to the Initial Guaranty Fee, the Lender shall pay to GHFA EDFI on each calendar year-end, an annual fee in the amount of 0.5% of the Current Credit Guaranty Exposure Amount (the "Annual Guaranty Fee," as and to the extent applicable, and together with the Initial Guaranty Fee, are collectively referred to as the "Loan Guaranty Fee"). Remittance by the Lender to GHFA EDFI of the Loan Guaranty Fee shall be paid by a check payable by Lender to GHFA EDFI for the amount of such Loan Guaranty Fee (or by other payment method deemed acceptable to GHFA EDFI) and shall be due and payable at the times as provided in this Section 4.2. Failure to timely pay all or any portion of the Loan Guaranty Fee shall be an event of default unless cured within5days; provided, however, that GHFA EDFI shall have no obligation to provide notice to Lender of any such default, it being the understanding and agreement of the parties that the Lender shall bear the administrative burden of complying with its payment obligations under this Agreement.

## Discretion of GHFA EDFI to Enroll Certain Loans in the Small Business Credit Guaranty Program. In addition to the limitations set forth in the definition of Maximum Enrolled Loan Amount, GHFA EDFI shall have the sole and absolute right to approve or reject enrollment of any loan in the Small Business Credit Guaranty Program.

## GHFA EDFI's Limited Guaranty of Loan Enrolled in Small Business Credit Guaranty Program. In consideration for Lender's compliance with the terms and conditions of this Agreement including, but not limited to, Lender's payment of the fee to GHFA EDFI more particularly described in Section 4.2 hereinabove, GHFA EDFI hereby guarantees and promises to pay, subject to the Maximum Guaranty Amount and other terms and conditions herein, the guaranty amount related to each loan enrolled by the Lender in the Small Business Credit Guaranty Program. Notwithstanding anything to the contrary set forth elsewhere in this Agreement, the maximum liability of GHFA EDFI to the Lender related to a loan enrolled by the Lender in the Small Business Credit Guaranty Program shall not exceed that amount which is 50% of the outstanding principal amount, at the time of default,on any Enrolled Loan. (the "Maximum Guaranty Amount").

## Default by a Borrower under Loan Enrolled in Small Business Credit Guaranty Program. Upon the occurrence of an event of default by the Borrower of an Enrolled Loan in the Loan Guaranty Program:

### the Lender shall copy GHFA EDFI with all notices to the Borrower, and further provide GHFA EDFI written notice describing in reasonable detail the circumstances of the event of default; and

### prior to the Lender's demand for payment from GHFA EDFI pursuant to GHFA EDFI's guaranty obligations to the Lender for loan(s) enrolled in the Small Business Credit Guaranty Program, the Lender shall diligently pursue the collection of all amounts owed by the Borrower under the Loan Documents pursuant to Section 5.11 hereof.

## Annual Review by GHFA EDFI. The Lender acknowledges and agrees that GHFA EDFI may annually review its financial condition and performance. As and to the extent GHFA EDFI reasonably determines that the Lender's performance or financial condition is unsatisfactory, the Lender shall be deemed in default of this Agreement.

## Meaningful Lender Participation and Lending Targets. The Lender shall have, or require another financial institution or other private investor to have meaningful capital resources at risk with respect to any loan sought to be enrolled in the Small Business Credit Guaranty Program. For purposes of this Agreement, "meaningful capital resources at risk" shall mean that the Lender or other financial institution or private investor must have at least 50% capital at risk (measured in terms of the total amount of loans or other financing being made available simultaneously with the closing on the Enrolled Loan) or such other percentage as set forth in the State's SSBCI rules and regulations so that the State may achieve a minimum of a $1:$1 private to public investment ratio. In addition, the Lender hereby covenants and agrees that it will (a) target businesses with an average Borrower size of 500 employees or less; provided, however, that in no case shall an Enrolled Loan be made to a businesses with more than 750 employees; (b) notwithstanding the Maximum Enrolled Loan Amount, target average loan sizes ranging from $100,000 to $250,000; (c) target Underserved Borrowers consistent with the requirements of the State and the marketing and outreach plan provided by the Lender to DCA.

## Ownership by Lender of Loan and Terms and Conditions of Loan Documents. The Lender shall be considered for all purposes as the legal and equitable owner of each Enrolled Loan and all security and documents related to each such Enrolled Loan. The enrollment of a loan by the Lender in the Small Business Credit Guaranty Program shall not constitute a sale by the Lender to GHFA EDFI of the enrolled loan and related security and related documents, nor an extension of credit by GHFA EDFI to the Lender. GHFA EDFI will not disburse any monies toward the initial funding of any Enrolled Loan; rather, it will maintain an amount sufficient to meet its guaranty obligation in respect of each Enrolled Loan. Notwithstanding the foregoing or anything else set forth in this Agreement, GHFA EDFI shall have no obligation whatever in respect of any Enrolled Loan for which Lender has disbursed funds to a Borrower without the Borrower's full execution of all of the applicable Loan Documents. The Lender shall cause the Loan Documents to reflect, in addition to such normal and customary loan provisions required by Lender, the terms and conditions required for the Borrower to maintain compliance with the State's laws, rules and regulations.

## Administration of Loan Enrolled in Small Business Credit Guaranty Program.

### Upon its request, the Lender shall provide GHFA EDFI with copies of all Loan Documents executed by a Borrower and any co-maker, guarantor or endorser or other debtor or obligor of any or all Enrolled Loans. Additionally, upon GHFA EDFI's request, the Lender shall provide GHFA EDFI with any additional documents arising out of, or related to, the Loan Documents.

### The Lender shall disclose GHFA EDFI's role in facilitating a loan enrolled by the Lender in the Small Business Credit Guaranty Program in connection with Lender's making of such loan and the restrictions and limitations placed upon such loan arising out of the SSBCI program. The Lender shall exercise the same degree of care and discretion in servicing a loan enrolled by the Lender in the Small Business Credit Guaranty Program as the Lender would take in servicing and collecting payments on loans made with non-SSBCI funds for the Lender's own account.

### For purposes of clarification, the Lender may, without the express prior written approval of GHFA EDFI, as and to the extent consistent with its obligations under Section 4.5(b), amend any material terms and conditions of any loan enrolled by the Lender in the Small Business Credit Guaranty Program, any Loan Documents or any documents otherwise securing such loan which effectuate any of the circumstances described in Section 4.9(c)(i) hereinabove.

### The Lender shall promptly notify GHFA EDFI in writing (and describe in reasonable detail) of any of the following:

#### should the Lender receive any written request by the Borrower or any co-maker, guarantor, endorser, or other debtor or obligor of any loan enrolled by the Lender in the Small Business Credit Guaranty Program for any change in the terms and conditions of such loan, or any of the Loan Documents, including, without limitation, any request for the release, substitution, or exchange of collateral for such loan or the release of any of their personal obligations under such loan;

#### should the Lender commence any collection proceeding against any Borrower or any co-maker, guarantor, endorser, or other debtor or obligor of any loan enrolled by the Lender in the Small Business Credit Guaranty Program; and

#### should the Lender seize, sell, transfer, assign, foreclose or attempt to exercise against any collateral securing any loan enrolled by the Lender in the Small Business Credit Guaranty Program.

## Other Loans by Lender with Loans Enrolled in Small Business Credit Guaranty Program. GHFA EDFI acknowledges that the Lender may have other existing loans with a Borrower that were made prior to the date of any loan enrolled by Lender in the Small Business Credit Guaranty Program ("Prior Loans") and may, in the future, make additional loans to the Borrower that are not enrolled by the Lender in the Small Business Credit Guaranty Program ("Future Loans"). After an event of default by a Borrower with respect to any Prior Loans, the loan enrolled by the Lender in the Small Business Credit Guaranty Program or any Future Loans, then in any collection proceeding or legal action taken by the Lender against a Borrower to collect amounts due under such loans (if any) and in any decisions or instructions concerning the priority of distribution of any amounts received by the Lender from the Borrower resulting from the Lender's or any other party's collection efforts in respect of such loans, any proceeds collected by the Lender or such other party shall be applied in the following order:

### First, to reimburse the Lender for the reasonable costs of any such collection action;

### Second, to pay interest, fees and principal with respect to the Prior Loans;

### Third, to pay interest, fees and principal with respect to loans or other financings to which the Enrolled Loan is subordinated;

### Fourth, to pay interest, fees and principal with respect to Enrolled Loans; and

### Fifth, to pay interest, fees and principal with respect to the Future Loans (to the extent the Enrolled Loans have not been expressly subordinated thereto).

The foregoing provisions shall not in any way limit the obligations of the Lender to take action against the Borrower after the occurrence of an event of default.

## Default by the Lender. The occurrence of any one or more of the following events or conditions shall constitute an event of default by the Lender under this Agreement (which defaults may be determined by GHFA EDFI or the State, acting in their sole discretion):

### any representation, warranty, certification, assurance or any other statement of fact contained in this Agreement, or any representation or warranty set forth in any document, report, certificate, financial statement or instrument now or hereafter delivered to GHFA EDFI or the State in connection with this Agreement, is found to be inaccurate, false, incomplete or misleading when made, in any material respect;

### any breach by Lender whereby the Lender materially fails to observe, comply with, meet or perform any term, covenant, agreement or other provision contained in this Agreement including, but not limited to, the failure to submit required reports.

### any other material breach by the Lender of any duty or obligation of the Lender under this Agreement, including, without limitation, the failure to reasonably pursue collections as specified in Section 5.11 hereof;

### the appointment of a receiver or custodian over a material portion of the Lender's assets, which receiver or custodian is not discharged within sixty (60) days following its appointment;

### any voluntary bankruptcy or insolvency proceedings are commenced by the Lender;

### any involuntary bankruptcy or insolvency proceedings are commenced against the Lender, which proceedings are not set aside within sixty (60) calendar days from the date of institution thereof; or

### any audit finding that the Lender intentionally made misstatements in any report issued to GHFA EDFI or the State shall find the Lender to be in default.

## Remedies to GHFA EDFI and State upon Lender's Default. Upon the occurrence of any one or more Events of Default by the Lender as set forth in Section 4.11 hereinabove, GHFA EDFI or the State (in the case of defaults under Section 4.11(a) or Section 4.11(b) above) shall be entitled, acting in their sole discretion, to pursue any or all of the following remedies, plus any additional rights and remedies available to such parties, whether such remedies are based in law or in equity:

### withhold disbursements under this Agreement pending the Lender's correction of the default; or

### the right to require the Lender's books and records related to any loan enrolled by the Lender in the Small Business Credit Guaranty Program to be separately audited by an independent certified public accountant selected by GHFA EDFI, at GHFA EDFI's sole cost and expense. Provided however, in the event the audit reveals that a breach of this Agreement has occurred, the Lender shall reimburse GHFA EDFI for the fees and expenses incurred to perform the audit.

## Remedies Not Exclusive. No remedy is intended to be the sole and exclusive remedy in case any event of default by the Lender under this Agreement shall occur and each remedy shall be cumulative and in addition to every other provision or remedy now or later existing at law, in equity, by statute or otherwise. The Lender shall pay all costs and expenses, including, without limitation, reasonable attorney’s fees and expenses incurred by GHFA EDFI in enforcing any obligation of the Lender arising from or under any loan enrolled by the Lender in the Small Business Credit Guaranty Program or the Loan Documents.

## No Waiver. No delay or failure by GHFA EDFI or the State, as the case may be, in the exercise of any right, power, or remedy accruing upon the occurrence of any event described in Section 4.11 herein shall impair any such right, power, or remedy, or be construed to be a waiver of or acquiescence in such event, nor shall any abandonment or discontinuance of steps taken to exercise any right, power or remedy preclude any further exercise thereof.

# MISCELLANEOUS

## Amendments of Agreement. GHFA EDFI may, with at least thirty (30) days prior written notice to the Lender, amend in writing 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.

## Information to GHFA EDFI. The Lender shall promptly provide GHFA EDFI with such additional information regarding its participation and activities in the Georgia SSBCI Programs, including the Small Business Credit Guaranty Program, as GHFA EDFI or the State may from time to time reasonably require.

## Records Retention and Inspection of Files. The Lender agrees to maintain, for a minimum of five (5) years after the repayment, repurchase or other termination of each Enrolled Loan adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with each Enrolled Loan and Loan Documents (including program-related principal, interest and fees). The Lender agrees that all books, records, and supporting documents related to each Enrolled Loan and the Loan Documents shall be available for review and audit by the State Auditor and the State of Georgia Attorney General, and agrees to cooperate fully with any audit and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the GHFA EDFI for the recovery of any amounts paid by the GHFA EDFI pursuant to all Enrolled Loans for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

## Compliance with Applicable Law. The Lender and GHFA EDFI shall comply with all applicable State, federal, and local laws, rules and regulations in the performance of this Agreement.

## Limitation of Rights. This Agreement shall be for the exclusive benefit of the Lender and GHFA EDFI, and shall not be construed to give any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement, other than as expressly set forth herein.

## Severability. If any clause, provision or section of this Agreement is held illegal or invalid by any court of competent jurisdiction, 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.

## Notices. All notices, certificates, requests or other communications hereunder (other than Exhibits and Reports referred to herein, which may be sent via regular mail) 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 GHFA EDFI:

GHFA Economic Development Financing, Inc.

c/o Georgia Department of Community Affairs

Attention: SSBCI Program Manager

60 Executive Park South, NE

Atlanta, Georgia 30329

Facsimile: (404) 679-0563

### If to the Lender:

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

## No Personal Liability. No member, officer, elected or appointed official or employee of GHFA EDFI, the State of Georgia, the Georgia Department of Community Affairs, the Georgia Housing and Finance Authority or the Lender, including any person executing this Agreement, shall be liable personally under this Agreement or subject to any personal liability solely by reason of his or her execution of this Agreement or participation in the Georgia SSBCI Program; provided, however, that nothing in this Section 5.9 shall be construed nor is it intended to be a waiver of any rights or remedies GHFA EDFI, the State of Georgia, the Georgia Department of Community Affairs or the Georgia Housing and Finance Authority shall have for any actual actions or omissions to act hereunder by the Lender.

## Collateral. GHFA EDFI shall have no legal or equitable interest in any collateral, security, third party guarantees or other right of recovery in connection with any loan enrolled in the Small Business Credit Guaranty Program, and, therefore GHFA EDFI's consent is not necessary for any amendment or modification to the Lender's loan documents related to an Enrolled Loan; provided, however, that Lender must enforce its rights under any collateral, security, third party guarantees (if any) and other rights of recovery consistent with the provisions of Section 5.11 below and without taking into account the limited guaranty of collection afforded under the Small Business Credit Guaranty Program.

## Collection of Loans/Payment of Claims; No Pledge of Faith, Credit, or Taxing Power. In addition to the requirements of Section 4.5(b) hereof, the Lender agrees to collect loans enrolled under the Small Business Credit Guaranty Program in compliance with all applicable provisions of State, federal and local law, and in a manner consistent with commercially reasonable and customary standards of collecting business loans not enrolled in the Georgia SSBCI Program. The Lender further covenants, acknowledges and agrees that the Small Business Credit Guaranty Program serves as a deficiency guaranty (that is, a limited guaranty of collection and not of payment and performance); therefore, the Lender must, in all cases, use its commercially reasonable efforts to initiate the liquidation of any and all collateral and/or security, commence assertion of any other rights of recovery, and seek performance of all third-party guarantees (if any) prior to making a claim for reimbursement by operation of the guaranty provided under the Small Business Credit Guaranty Program; provided, however, that nothing herein contained is intended, nor shall it be construed as requiring the Lender to seek and/or receive a final judgment or otherwise take legal action to collect on any Enrolled Loan prior to seeking payment from the Small Business Credit Guaranty Program. Failure to comply with the provisions of this Section 5.11 shall be, for all purposes, an immediate and non-curable event of default with respect to the Enrolled Loan for which a reimbursement is sought under the Small Business Credit Guaranty Program.

Upon the approval of any claim for payment by GHFA EDFI in respect of an Enrolled Loan, GHFA EDFI will make, or cause to be made, payments on said claim within 15 business days.

Subject to the terms and conditions of any subordination agreement executed in writing by GHFA EDFI and the Lender and/or any third party lender, any amounts recovered upon the Borrower's default, either before or after payment on a claim by GHFA EDFI as contemplated herein, are to be distributed on a pro rata basis equal to GHFA EDFI's percentage interest in the total loans made to the Borrower by GHFA EDFI, the Lender and any third party lender, after payment of the reasonable fees and expenses of collection.

The Lender hereby covenants and agrees that the performance of the guaranty obligations in respect of the Enrolled Loans as contemplated in this Agreement, shall not be deemed nor are such payment obligations intended to be a pledge of the faith, credit, or taxing power of the State or any component unit or instrumentality thereof (GHFA EDFI, DCA and GHFA have no taxing power) or a general obligation of the Small Business Credit Guaranty Program. Any assurances, guarantees, or other credit enhancements provided under the Small Business Credit Guaranty Program do not pledge the faith, credit, or taxing power of the State or any component unit or instrumentality thereof (GHFA EDFI, DCA and GHFA have no taxing power), and such enhancements are expressly payable only to the extent of the funds contained in, and subject to the limitations of GHFA EDFI's guaranty obligations made in respect of this Agreement to which each Enrolled Loan relates.

## Confidentiality. Except as may be required by law, including under the Georgia Open Records Act (and any similar federal laws), the GHFA EDFI will endeavor to maintain the confidentiality of all information furnished to it (or its designee) hereunder or in connection with any document relative to an Enrolled Loan, except that the GHFA EDFI will have no obligation of confidentiality with respect to information that may be generally available to the public, disclosed pursuant to a court order, or otherwise becomes generally available to the public through no fault of the GHFA EDFI. The sharing of information with or providing of information to another agency or authority of the State of Georgia by the GHFA EDFI (or its designee) shall not be deemed to violate this undertaking, provided that such agency or authority shall remain bound by the confidentiality provisions contained herein. The GHFA EDFI shall be authorized to publicize information regarding all Enrolled Loans, including, without limitation, information related to the name of the Borrower, the name of the Lender and the amount of the Enrolled Loan. Notwithstanding anything set forth herein to the contrary, the GHFA EDFI shall be authorized to share with the State any information or any document related to the Georgia SSBCI Programs or any Enrolled Loan thereunder, upon the request of or as otherwise required by the State.

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

## Interpretation Jurisdiction, and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia. The parties agree that jurisdiction shall be solely in the courts of the State of Georgia and that venue shall be solely in the Superior Court of Fulton County, Georgia.

## 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.

[Signatures on following page]

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first set out above.

**GHFA EDFI**:

**GHFA ECONOMIC DEVELOPMENT FINANCING, INC.** ATTEST:

By: **Christopher Nunn** Date:

Its: **Executive Director**

**LENDER**:

**[INSERT LENDER'S LEGAL NAME HERE]** ATTEST:

By:       Date:

Its:

Tax Identification Number:

(LENDER'S SEAL)

**STATE OF GEORGIA**

**GEORGIA STATE SMALL BUSINESS CREDIT GUARANTY PROGRAM (SBCG)**

**EXHIBIT 1 – BORROWER CERTIFICATION AND ENROLLMENT FORM**

**BORROWER CERTIFICATION**

***Please complete this form for all loans enrolled in an SSBCI program.***

Legal Name of SSBCI **Borrower**:

For the purpose of this certification, Borrower may include the following other Certifying Entities: Co-Borrower; Eligible Passive Company/Borrower; Operating Company/Co-Borrower; Operating Company/Guarantor.

Legal Name of **Certifying Entity** (if applicable):

Status of Borrower or Certifying Entity:

Borrower

Co-Borrower

Eligible Passive Company/Borrower

Operating Company/Co-Borrower

Operating Company/Guarantor

The Borrower or other Certifying Entity hereby certifies the following to the lender:

1. The Borrower is a corporation, partnership, limited liability company, limited liability partnership, joint venture, sole proprietorship, cooperative, or other entity, which is authorized to conduct business in the State, and the proceeds of the loan will be used for a business purpose, which includes, but is not limited to start-up costs, working capital, business procurement, franchise fees, equipment, inventory, lines of credit, buildings or other real estate improvements for an industrial, commercial or other business enterprise that is not for Passive Real Estate Ownership, or any combination thereof, generally within the state as described below; however, a business purpose shall specifically exclude acquiring or holding passive investments such as Passive Real Estate Ownership, 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. If proceeds of the loan are for buildings or other real estate improvements, that the real estate is located in Georgia.  If proceeds of the loan are for franchise fees, that the business for which the fees are paid is located in Georgia.  If proceeds of the loan are for equipment, that the equipment is installed or titled in Georgia.  If the proceeds of the loan are for start-up costs, working capital, business procurement, inventory, or any other costs, that the proceeds are used to directly benefit a business within the state of Georgia.
2. The loan or investment proceeds will not be used to:
   1. repay a delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority; or
   2. repay taxes held in trust or escrow (e.g., payroll or sales taxes); or
   3. reimburse funds owed to any owner, including any equity injection or injection of capital for the Borrower's continuance; or
   4. to purchase any portion of the ownership interest in the Borrower.
3. The borrower or investee is not:
   1. an executive officer, director, or principal shareholder of the Lender; or
   2. a member of the immediate family of an executive officer, director or principal shareholder of the lenders; or
   3. a related interest of an such executive officer, director, principal shareholder, or member of the immediate family.

For the purpose of these three restrictions, the terms "executive officer," "director," "principal shareholder," "immediate family," and "related interest" refer to the same relationship to a Lender as the relationship described in Part 215 of Title 12 of the Code of Federal Regulations, or any successor to such part.

1. The borrower is not:
   1. a business engaged in speculative activities that develop profit from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or
   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); or
   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; or
   4. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or
   5. a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

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The Borrower hereby certifies to the GHFA EDFI that the Principals of the Borrower 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 partner[[2]](#footnote-2); if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

Borrower or Certifying Entity Legal Name:

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

Authorized Signatory

Name:

Title:

Date:

**BORROWER ENROLLMENT FORM**

Legal Name of SSBCI **Borrower**:

Borrower's Trade Name ***OR*** Certifying Entity’s Trade Name, D/B/A if applicable: **\***

\*If Doing Business under another name, please include the County where your Trade Name was registered pursuant to O.C.G.A. 10-1-490:

Physical Address of Borrower ***OR*** Certifying Entity: (Street, City, State, Zip)

Will loan proceeds be used at the above address?  Yes  No

If no, what is the physical address (Street, City, State, Zip) where the loan proceeds will be used?

Borrower’s Current number of Employees:

Borrower’s Current Number of Contract Employees (if applicable):

Borrower’s Number of employees from affiliates (if applicable):

Borrower’s Estimate of jobs retained by reason of this loan:

(Jobs which would be lost if not for this loan)

Borrower’s Estimate of Contract Employee Jobs Retained (if applicable):

(Jobs which would be lost if not for this loan)

Borrower’s Estimate of jobs created by reason of this loan:

Borrower’s Estimate of Contract Employee Jobs Created (if applicable):

Borrower’s Annual Sales based on the most recent fiscal year:

Borrower’s Annual Net Income / (Net Losses) based on the most recent fiscal year:

Year the current owners began operating the business (e.g. 2001):

Borrower, hereby grants permission to the Lender to share confidential information with the GHFA EDFI or its appointed agents including, but not limited to: (a) the name and address of the Borrower; (b) primary activity of the Borrower; (c) recent annual revenues; (d) amount of the Eligible Loan to the Borrower enrolled in the LPP Program; (e) interest rate applicable to the Enrolled Loan; (f) number of employees of the Borrower; (g) estimated number of jobs to be added and retained by the Borrower by reason of the LPP loan; and (h) the borrower’s credit analysis performed by the lender.

**(Continued on the Next Page)**

|  |
| --- |
| ***Voluntary Disclosure of Gender, Ethnicity, and Veteran Status***  This section of the enrollment form may be voluntarily completed by the Borrower in order to assist GHFA EDFI with tracking the effectiveness of the SBCG Program in reaching certain groups. It is not mandatory and the failure to complete this section will not affect the eligibility of the loan for enrollment in the SBCG Program.  Is this business female-owned (51% or more ownership)? (Check one):   Yes  No  Declined to answer  Is this business minority-owned (51% or more ownership)? (Check one):  Yes  No  Declined to answer  Ethnicity (Check as many that apply):  White   Asian-American   African-American   American Indian   Hispanic  Other:    Declined to answer  Is this business veteran-owned (51% or more ownership)? (Check one):  Yes  No   Declined to answer. |

The borrower hereby certifies that all the above information is true and accurate to the best of his or her knowledge, and further covenants that it shall deliver prompt notice to Lender and the State of any inaccuracies that it discovers.

Borrower or Certifying Entity Legal Name:

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

Authorized Signatory

Name:

Title:

Date:

**Privacy Notice**

**Georgia Open Records Act Notice:**

Under the Georgia Open Records Act, all public records of entities deemed agencies under Georgia law, including GHFA EDFI, are required to be open for a personal inspection by any citizen of Georgia at a reasonable time and place, except those which by order of a court of the Georgia or by law are prohibited or specifically exempted from being open to inspection by the general public. The persons in charge of such records shall not refuse this privilege to any citizen. Under the Georgia Open Records Act, public disclosure shall not be required for records that are, among other exemptions:

(a) Specifically required by the federal government to be kept confidential; or

(b) Noted in O.C.G.A §50-18-72 in the Georgia Open Records Act as an exemption.

**STATE OF GEORGIA**

**GEORGIA STATE SMALL BUSINESS CREDIT GUARANTY PROGRAM (SBCG)**

**EXHIBIT 2 - LOAN FILING FORM & LENDER CERTIFICATION**

**LOAN FILING FORM:**

**Lender Information**

Lender’s Legal Name:

Lender EIN:

Lender Loan #:

**Borrower Information**

Legal Name of Borrower:

Trade Name of Borrower:

Web Address of Borrower:

Physical Address Where Proceeds Will Be Used: (Street, City, State)

Zip Code:       County Name:

Geocoding Data:State Code #:      County Code #:       Census Tract #:

NAICS Code (6 Digit):

Primary Business Activity of Borrower:

*If Borrower is a Real Estate Holding Company*

**Operating Company Information (if applicable)**

Operating Company Legal Name:       NAICS:

Operating Company Trade Name:

Operating Company Physical Address: (Street)

City:       State:       Zip:       County Name:

Primary Activity of Business:

**We Request Approval for Guaranty of the Following Loan:**

Total Loan Amount:

Enrolled/Covered Loan Amount:

Loan Type (Please check one):  Term (Max. 60 mo.)  Line of Credit (Max 24 mo.)

Loan Terms: Construction Phase: from       to       Rate:

Fixed  Adjustable

Permanent Phase: from       to       Rate:

Fixed  Adjustable Amortization Period:       mo.

Combined Loan Payment:       monthly

Does Borrower Currently Have any Other Loans with Lender:  Yes  No

Anticipated Date of Loan Closing:

**Please Indicate Loan Purpose:**

**Public-Private Leveraging**

Please indicate what the SBCG program leverage of private financing to public financing will be for the initial leverage on this loan: (Ex: 1:1)

Please indicate the total dollar amount of private financing (non-SSBCI) secured, to date, in connection with this loan?

The lender hereby certifies that all the above information is true and accurate to the best of his or her knowledge, and further covenants that it shall deliver prompt notice to GHFA EDFI of any inaccuracies that it discovers.

Lender's Legal Name:

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

Name:

Title:

Date:

**LENDER CERTIFICATION:**

***Please complete this form for every loan enrolled in an SSBCI program.***

Legal name of lender:

The Lender hereby certifies the following:

1. The loan or investment has not been made in order to place under the protection of the Georgia SSBCI Program prior debt that is not covered under the Georgia SSBCI Program and that is or was owed by the borrower to the lender or to an affiliate of the lender.
2. The loan or investment is not a refinancing of a loan or investment previously made to that borrower by the lender or an affiliate of the lender.
3. The lender is not attempting to enroll the unguaranteed portions of the SBA-guaranteed loans.
4. Please check the appropriate box applicable to this loan:

Loan is to a woman-owned or minority-owned business

Loan creates jobs for low-to-moderate income persons

Loan is to low-to-moderate income business owner\*

Loan is for business located in a low-to-moderate income area\*

None of the above

\*As defined by U.S. Department of Housing and Urban Development

Lender’s Legal Name:

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

Authorized Signatory

Name:

Title:

Date:

**STATE OF GEORGIA**

**GEORGIA STATE SMALL BUSINESS CREDIT GUARANTY PROGRAM (SBCG)**

**EXHIBIT 3 - CLAIM FORM**

1. Name of Lender:
2. Lender EIN:
3. Lender Loan #:
4. Name of Borrower/Loan:
5. Original Amount of Enrolled Loan:
6. Outstanding Balance of Enrolled Loan (Immediately prior to charge-off):
7. Total Amount of Claim:  (50% of Outstanding Balance)

The completed Claim Form, along with proof that the above Enrolled Loan has been charged off, should be submitted to:

SSBCI Program Manager

60 Executive Park South, NE

Atlanta, Georgia 30329

Email To:

SSBCI.Manager@dca.ga.gov

OR

Authorized Signature:

Name and Title (Printed): (i.e. John Smith, President)

Email: Phone: Date:

|  |  |
| --- | --- |
|  |  |

**STATE OF GEORGIA**

**GEORGIA STATE SMALL BUSINESS CREDIT GUARANTY PROGRAM (SBCG)**

**EXHIBIT 4 - LOAN TERMINATION, MATURITY, MODIFICATION & RENEWAL FORM**

|  |  |
| --- | --- |
| **Lender Information**  Lender Name:  Lender Loan #:  SSBCI Loan #:  Lender Loan Amount:  Loan Type:  Term  Line of Credit | **Borrower Information**  Name of Borrower:  Physical Address Where Proceeds Will Be Used (Street, City, State, Zip): |

**Please Check Which Applies:**  Termination  Maturity  Modification  Renewal

**SSBCI Loan Information (Modification or Renewal Only)**

|  |  |
| --- | --- |
| New Loan Term: from  to  Increase in Loan Amount to be Covered:  Decrease in Loan Amount to be Covered: | Previous Loan Amount Covered:  Current Outstanding Balance:  New Total Loan Amount Covered: |

The Lender hereby certifies that all the above information is true and accurate to the best of his or her knowledge.

Lender's Legal Name:

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

Printed Name & Title:

Date:

1. Note that all loans to religious non-profits and faith-based organizations must comply with State Constitutional law. All proposed loans to such entities must be pre-cleared with GHFA EDFI. [↑](#footnote-ref-1)
2. Including Limited Partners [↑](#footnote-ref-2)