



Third Frontier
Innovation Creating Opportunity

Appendix C

Ohio Third Frontier

Pre-Seed/Seed Plus Fund Capitalization Program

Form of Loan Agreement



PRE-SEED FUND LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT (the "Agreement") is made and entered into as of _____, 2015, between the Director of the Ohio Development Services Agency and the Director's successors and assigns, acting on behalf of the State (the "Director") and _____, an Ohio _____ (the "Borrower").

Loan Summary	
Loan Amount: \$_,000,000.00	
Allowable Cost Percentage: __% Director Loan and __% Required Contribution from Borrower	
Borrower: _____, an Ohio _____	
Address of Borrower: _____	
Project Contact Name and Title:	
Project Contact Telephone Number and Email:	
Project Start Date: _____, 2014	Closing Date: ●
Payment Commencement Date: Principal payments upon disposition of Collateral with any outstanding balance due at maturity; interest payments due at maturity	Interest Rate: (a) Disbursement Date – the Third Anniversary of the Disbursement Date: 0% (b) Beginning year four after the Disbursement Date, simple interest at the Applicable Federal Rate
Term: 10 years from Closing Date Renewal: 5 years from end of Term	
Metric Commitments	
Total Funding: \$_,000,000	[At least 2x Loan Amount]
Collateral and Security	
Negative Pledge and Payments upon Liquidity Event As Set Forth in Sections 2.3 and 2.4	

Background Information

A. Pursuant to the Ohio Revised Code, including without limitation, Chapter 166 Chapter 184 and Section 122.02 of the Ohio Revised Code, the Director is authorized, among other things, to make loans on a competitive basis for the State of Ohio's high technology research and development capabilities and product and process innovation and commercialization.

B. The Director's loan in the amount of \$_____ has been approved by Controlling Board Action No. DEV01_____ dated _____, 2014 in support of the Ohio Third Frontier Pre-Seed Fund Capitalization Program (the "Program").

C. The Borrower has requested that the Director provide the financial assistance to the Borrower as herein described.

D. The Director has determined that the Loan constitutes an eligible loan under the Program and that the financial assistance to be provided pursuant to this Agreement is

appropriate and will be in furtherance and in implementation of the public policy set forth in the Ohio Revised Code.

Provisions

NOW, THEREFORE, in consideration of the premises and the representations and agreements hereinafter contained, the Director and the Borrower agree as follows:

Section 1. Definitions.

1.1. Use of Defined Terms. All capitalized terms used herein shall have the meanings therein set forth in Schedule 1 attached hereto unless the context or use expressly indicates a different meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms therein defined.

1.2. Certain Words and References. References to sections or provisions of the Constitution of the State or to sections, provisions, chapters or titles of the Ohio Revised Code or the United States Code shall be construed to also refer to successor sections, provisions, chapters or titles. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

1.3 Incorporation of Ancillary Documents. The following Schedules and Exhibits are attached to the Agreement and are incorporated by reference. The award of Loan Funds is made subject to those provisions of Exhibit I identified as being applicable to this Agreement. Borrower acknowledges and agrees that Exhibit I, Exhibit II, and the description of the Project as set forth in Exhibit V shall be used to determine eligibility for payment under this Agreement. In the event Borrower fails to perform in accordance with the terms and conditions set forth in such Exhibits, Borrower shall be in default of its obligations in this Agreement and Borrower shall be required to repay to Director an amount of Loan Funds determined by Director.

- (a) Schedule 1
- (b) Schedule 2
- (c) Exhibit I – Statement of Conditions
- (d) Exhibit III – Cost Share Guidelines
- (e) Exhibit IV – Certification Accompanying Financial Reports
- (f) Exhibit VI – Letter to Borrower Regarding Reporting Requirements

The following Exhibits are not attached to the Agreement but are incorporated into it by reference.

- (h) Exhibit II – Request for Proposals, if applicable
- (i) Exhibit V – Proposal, As Amended

1.4 Order of Preference. If any of the provisions of the documents comprising the Agreement conflict, the order of preference for authority of the documents shall be first, the text of the Agreement itself, followed by the Exhibits as set forth in the alphabetical order, (a) through (i), of Section 1.3 above regardless of whether or not an Exhibit is attached to the Agreement. Furthermore, any reference to an Exhibit is deemed to include any documents and materials incorporated by reference into such Exhibit.

Section 2. Loan; Conditions to Disbursement

2.1. Loan and Repayment. On the terms and conditions of this Agreement, the Director shall lend Ohio Third Frontier Research and Development taxable funds to the Borrower in the principal amount of \$1,000,000.00 (the "Loan Funds"), for the purpose of providing support to eligible early-stage technology companies in accordance with Exhibit II and undertaking the project as described in Exhibit V (the "Project") in accordance with the terms and conditions hereof. The Loan Funds shall be evidenced by this Agreement and the other Loan Documents, as applicable. Those instruments shall be executed and delivered by the Borrower to the Director on the Closing Date. The Loan shall be disbursed pursuant to Section 2.7 hereof upon the satisfaction of the conditions set forth in Section 2.6 hereof. The Loan Funds shall be disbursed only from, and only to the extent that on the Disbursement Date funds are available to make the Loan from moneys allocated to the Director pursuant to the Program and the "Ohio Third Frontier Pre-Seed Fund Capitalization Fund."

2.2. Cost Share Amount. Borrower shall expend, in support of the Project, \$1,000,000.00 (the "Cost Share Amount") proportionate to the disbursements as set forth in Section 2.7 of this Agreement. Acceptance of this Agreement by Borrower certifies that the Cost Share Amount will be available to Borrower for use in support of the Project as described in Exhibit V. The Cost Share Amount shall be made available and used in accordance with the guidelines set forth in Exhibit I and Exhibit III, and Borrower shall be required to account for the expenditure of the Cost Share Amount from time to time during the Term of the Agreement in accordance with the cost share ratio set forth in Exhibit III and Exhibit V. The Cost Share Amount must be used directly in support of the Project and not for coincidental or related/similar allocations. The Cost Share Amount must be necessary and directly allocable to activities that support the Project objectives. Resources designated for cost share cannot be used and counted against the Cost Share Amount if such resources have also been, or will be, counted toward satisfying a cost share requirement of another award of grant or loan funds from Director. If Borrower is unable to satisfy its cost share amount and is able to substitute resources of its own or from other sources in an amount equal to or greater than the Cost Share Amount, Director shall accept the substitution of resources and Borrower shall be deemed to be in compliance with its cost share commitment. In the event Borrower is not able to provide the Cost Share Amount as required by this Agreement, Borrower shall be in default and Director may, in its discretion, either terminate this Agreement and the award of Loan Funds or reduce the award of Loan Funds to be received by Borrower proportionate to the shortfall in the Cost Share Amount. For the sake of clarity, the provision of investment capital in accordance with Section 2.1 and



the other provisions of this Agreement is a proper expenditure of the Cost Share Amount.

2.3. Negative Pledge and No-Debt. The Borrower hereby agrees that it will not, without the prior written consent of the Director, grant a lien or security interest in, or otherwise mortgage, encumber, pledge, and/or enter into a negative pledge agreement with respect to: (a) all documents (including, if applicable, electronic documents), instruments, promissory notes, chattel paper (whether tangible or electronic), proceeds of securities, and all other investment property, general intangibles (including all payment intangibles), and any other contract rights or rights to the payment of money; and (b) all Proceeds and products of each of the foregoing, all books and records relating to the foregoing, all supporting obligations related thereto, and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, and any and all Proceeds of any insurance indemnity, warranty or guaranty payable to the Borrower from time to time with respect to any of the foregoing general intangibles, except for such liens or security interests already disclosed to the Director and existing on the Closing Date. The Borrower further agrees that it will not, without the prior written consent of the Director, incur any other indebtedness outside the ordinary course of business.

2.4. Payments to Director; Consent to Distributions. Upon the occurrence of a Liquidity Event, payments shall be made by Borrower to the Director in accordance with the terms of the Borrower's promissory note. The Director hereby consents to distributions by Borrower to its shareholders or investors so long as (a) there is a payment to the Director proportionate to the Cost Share on the Loan; and (b) after deducting the aforementioned disbursements, the Borrower's most recent "Investments, at fair value" exceeds the outstanding Loan balance.

2.5. Disbursement by Director. Loan Funds shall be held by the Director and are subject to disbursement requests and invoices for additional capital, pursuant to Section 2.7(b) of this Agreement, as Borrower's investments are made. Loan Funds will be available for disbursement until the third anniversary of the Effective Date (the "Deadline Date"). If the Loan Funds are not fully disbursed or the Deadline Date is not extended, the Loan Funds will no longer be available to Borrower unless the time period to seek a disbursement is extended, in the Director's sole discretion.

2.6. Conditions to Disbursement. The initial disbursement of the Loan shall be made after the Director has received and satisfactorily reviewed the following:

- (a) This Agreement, duly executed by the Borrower and Director;
- (b) Evidence of the Required Cost Share Amount proportionate to the disbursements as set forth in Section 2.7 of this Agreement;
- (c) Certification by the Borrower that its representations and warranties made in the Loan Documents remain true, accurate and complete and no default or



event which, by notice, the passage of time or otherwise, would constitute a default, exists under the Loan Documents;

- (d) all other Loan Documents;
- (e) The Borrower's Certificate of Good Standing issued by the Secretary of State of the State of Ohio, dated within 10 days prior to the disbursement;
- (f) Certified copy of the resolutions of the governing board of the Borrower authorizing execution and delivery of all documents with respect to the Loan;
- (g) Certificate of incumbency as to the Borrower;
- (h) A copy, certified by the Borrower to be true, correct and complete, of the Governing Instruments of the Borrower;
- (i) An opinion of the Borrower's legal counsel, which sets forth the items listed in Schedule 2 attached hereto;
- (j) Evidence that no litigation or proceedings are pending or threatened which could or might cause a material adverse change with respect to the Borrower;
- (k) Current annual financial statements of Borrower; and
- (l) Such other certifications, documents or opinions as the Director may reasonably require.

2.7. Disbursement of Loan. After the Closing Date, but in any event no later than the Deadline Date, Borrower shall be entitled to receive disbursements of the Loan Funds in accordance with the provisions of this Section 2.7 within ten (10) Business Days after compliance with all conditions precedent hereto, provided that (i) no material adverse change has occurred with respect to Borrower, (ii) no Event of Default and no material default exists hereunder or under any other Loan Documents, and (iii) such disbursement shall be paid in proportion to the required Cost Share Amount in accordance with the following:

- (a) Initial Disbursement. Upon request from Borrower, Director shall disburse the initial disbursement, in an amount not to exceed 15% of the Loan Funds.
- (b) Subsequent Disbursements. Upon Borrower's review, due diligence, and approval of investment candidates in accordance with Exhibits I, II, III, and V, Borrower shall submit a disbursement request (each a "Disbursement Request") to Director in a form and substance reasonably acceptable to the Director. Within ten (10) days of receipt of the Disbursement Request from



Borrower, Director shall review the disbursement request to ensure that the proposed disbursement is to an Ohio company, is in the agreed-upon stage of development, is in a qualifying technology sector, is receiving matching funds at the agreed upon cost-share ratio outlined in Exhibit I, and if the aforementioned criteria are satisfied, subject to the last sentence of Section 2.1, Director will approve the request. Upon approval of the Disbursement Request, Loan Funds will be transferred to the Borrower. If Due Diligence and Enhanced Management Fees were included in the proposed budget in Exhibit V, Borrower may request a disbursement of Loan Funds for the budgeted Due Diligence and Enhanced Management Fees. Such requests shall be supported by documentation reasonably acceptable to the Director demonstrating the basis for the requested disbursement.

- (c) If a Disbursement Request is not approved by Director, Director shall provide written notice to Borrower of the reason for the lack of approval within ten (10) business days of such Disbursement Request. Borrower shall have 30 days to respond to the notice and supplement or amend the Disbursement Request.
- (d) As a condition precedent to each disbursement of Loan Funds after the initial disbursement, Borrower shall furnish or cause to be furnished to the Director the following documents covering each disbursement, in form and substance reasonably satisfactory to the Director:

Evidence of the applicable Cost Share Amount in the amount and ratio specified in Exhibit I and the approved budget included in Exhibit V on terms and conditions satisfactory to the Director;

The subscription agreement (or other investment documents) for the entity in which Borrower plans to invest, along with all organizational documents for such entity; and

Such other instruments, documents and information as the Director may reasonably request in writing.

2.8. Confidentiality. Ohio has adopted the Uniform Trade Secrets Act, which prohibits the disclosure of information determined to be a “trade secret” as defined in Ohio Revised Code § 1333.61(D). Any information submitted to Director shall be considered public information and shall be released if requested unless such information is determined to be a “trade secret” or is otherwise exempted from disclosure under Ohio Revised Code § 122.36. Any information submitted to Director which is considered by Borrower, or any entity in which Borrower intends to invest, to be “confidential” or a “trade secret” must be clearly marked as such. Every report, deliverable or other submission containing “trade secret” information must contain a page that lists each page in the submission where trade secret information appears and the number of occurrences of trade secret information on that page, identify each and every occurrence of the information within the submission

with an asterisk before and after each line containing the trade secret information and underline the trade secret information itself.

2.9. Payment of Costs; Indemnification. Except with regard to Director's gross negligence or willful misconduct, Borrower shall hold harmless Director, its agents and their respective employees from any and all liabilities or claims caused by or resulting from Borrower's performance of the obligations or activities in furtherance of the Project or any omissions of Borrower in its performance of obligations or activities in furtherance of the Project. Borrower shall reimburse Director, its agents and/or their respective employees for any judgments arising from Borrower's actions or inactions, which may be obtained against Director, such agents or employees, as the case may be, including, without limitation, judgments for infringement of any patents or copyrights. Borrower agrees to reimburse Director, its agents and/or their respective employees for all costs, including reasonable legal fees, incurred by Director, such agents or employees in defending any such claims or legal actions if called upon to do so by Director or the affected agent or employee.

Section 3. Determinations and Representations

3.1. Determinations of the Director. Pursuant to the Program and on the basis of the information provided by the Borrower in this Agreement and ancillary documents incorporated herein, the Director has made certain determinations, which are hereby confirmed, and the Director hereby determines that the financial assistance to be provided by Director pursuant to this Agreement will conform to the requirements of the Program and will further and implement the purposes of providing capital to eligible early-stage technology companies in Ohio, increasing the number of professionally managed Pre-Seed Funds investing throughout Ohio, create a risk-capital climate that supports the development, retention and attraction of investable technology companies in Ohio thereby creating new jobs or preserving existing jobs and employment opportunities and improving the economic welfare of the people of the State.

3.2. Representations and Warranties of the Borrower. As an inducement to Director to enter into this Agreement and to consummate the transactions contemplated herein, the Borrower hereby represents and warrants that:

- (a) Borrower is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Ohio and is duly qualified to transact business in the State of Ohio, and has all requisite power to conduct its business as now conducted and to own, hold and lease its assets and properties as presently conducted.
- (b) Borrower has full power and authority to execute, deliver and perform this Agreement and the other Loan Documents and to enter into and carry out the transactions contemplated thereby. Such execution, delivery and



performance do not, and will not, violate any provision of law or any court order applicable to the Project, the Borrower or the Governing Instruments of the Borrower and do not, and will not, conflict with or result in a default, under any material agreement or instrument to which the Borrower is a party or by which it or any of its property or assets is or may be bound. The Loan Documents have, by proper action, been duly authorized, executed and delivered and constitute legal, valid and binding obligations of the Borrower, subject in each case, to applicable bankruptcy, insolvency, moratorium and similar laws relating to or affecting the rights of creditors generally, and subject to the general principles of equity, now or hereafter in effect.

- (c) No consent, approval or authorization of or declaration, registration or filing with any Governmental Authority or nongovernmental person or entity, including any creditor or shareholder of Borrower, is required in connection with the execution, delivery and performance of this Agreement or any of the Loan Documents, except for such consents, approvals or authorizations of or declarations or filings with any Governmental Authority or nongovernmental person or entity which have been obtained.
- (d) The provision of financial assistance pursuant to this Agreement will enable the Borrower to invest in the certain of the Ohio Third Frontier technology focus areas and invest in new opportunities, existing Ohio companies, or companies that will relocate to Ohio as a condition of the investment.
- (e) There are no actions, suits or proceedings pending or, to the best of Borrower's knowledge, threatened against or affecting the Borrower which, if adversely determined, would individually or in the aggregate adversely and materially impair the ability of the Borrower to perform any of its obligations under the Loan Documents or adversely and materially affect the financial condition of the Borrower.
- (f) Borrower is not in default under any of the Loan Documents, or in the payment of any indebtedness for borrowed money or under any agreement or instrument evidencing any such indebtedness and no event has occurred which by notice, the passage of time or otherwise would constitute any such event of default.
- (g) Borrower has obtained all material Governmental Approvals and all laws relating to the Project, including applicable securities laws, have been complied with in all material respects.
- (h) Borrower is not a party in interest to any plan defined or regulated under ERISA, and the assets of Borrower are not "plan assets" of any employee benefit plan covered by ERISA or Section 4975 of the Internal Revenue Code.



- (i) Borrower is not a “foreign person” within the meaning of Section 1445 or 7701 of the Internal Revenue Code.
- (j) Neither the Borrower nor any of the officers, directors, principals, employees or owners of in the Borrower or its Affiliates are on the list of Specially Designated Nationals and Blocked Persons promulgated by the United States Department of the Treasury and located on the internet at www.treas.gov/offices/eotffc and www.treas.gov/ofac/t11sdn.pdf.
- (k) The Borrower is not (i) an executive officer, director or principal shareholder or employee of the Director or Jobs Ohio, (ii) a member of the immediate family of an executive officer, director or principal shareholder or employee of the Director or JobsOhio, or (iii) a related interest of any such executive officer, director, principal shareholder, employee or member of the immediate family of any such executive officer, director, principal shareholder, employee of the Director or JobsOhio. For purposes of this subsection, the terms “executive officer”, “director”, “principal shareholder”, “immediate family member” 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.
- (l) No representation or warranty of the Borrower contained in any of the Loan Documents, and no statement contained in any certificate, schedule, list, financial statement or other instrument furnished to the Director by or on behalf of the Borrower contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading. All representations and warranties made by the Borrower in any of the Loan Documents, and any statement contained in any certificate, schedule, list, financial statement or other instrument furnished to the Director by or on behalf of the Borrower are hereby incorporated herein by reference thereto. If Borrower has knowingly made a false statement to Director or any agent of Director to obtain the award of Loan Funds, Borrower shall be required to return all Loan Funds immediately pursuant to Ohio Revised Code § 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to Ohio Revised Code § 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification pursuant to Ohio Revised Code § 2921.13(F)(1), a misdemeanor of the first degree.
- (m) The financial statements of the Borrower heretofore delivered to the Director are true, complete and correct, in all material respects, have been prepared in accordance with generally accepted accounting principles consistently applied, fairly present the financial condition and the results of operation of the Borrower as of the dates thereof in all material respects

(subject, in the case of interim financial statements, to usual year-end audit adjustments), and do not fail to state any material fact necessary to make such statements or information, taken as a whole, not misleading. No materially adverse change has occurred in the financial condition of the Borrower reflected therein since the respective dates thereof. Director acknowledges and agrees that no warranty or representation is given by Borrower on the contents or information contained in any financial forecast or projection or other similar information furnished by Borrower.

- (n) As of the Effective Date, Borrower has, and will maintain throughout the Term, an established business presence in the State of Ohio and shall maintain a business office with a full-time staff, which shall include, at a minimum, a Fund manager (or equivalent) and one additional person in a professional or support role.
- (o) The Borrower possesses or retains knowledge, skills and experience in the following areas (or has hired or consulted with one or more third parties in connection with this Agreement and the transactions contemplated hereby that possesses or retains such knowledge, skills and experience) as set forth in Exhibit V:
 - (i) Investing directly in companies in the seed or early stage of development;
 - (ii) Providing assistance to venture capital funds in activities relating to fund formation, including, but not limited to, entity formation, fundraising, management systems and professional recruitment; and
 - (iii) Working with the State and/or out-of-state venture capital funds, and institutional investors.
- (p) To Borrower's knowledge, Borrower does not owe: (1) any delinquent taxes to the State or any political subdivision of the State; (2) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (3) any other moneys to the State, a State agency or a political subdivision of the State that are past due, whether or not the amounts owed are being contested in a court of law.
- (q) Borrower certifies that there is in effect an administrative process to identify and resolve financial or other conflicts of interest that may affect or create the appearance of affecting the objectivity of any activities to be conducted by the Borrower with the support of Loan Funds provided under this Agreement. Borrower will inform Director in writing of all conflicting financial or other interests that have been identified and provide for each such conflict a

description of how the conflict has been resolved to protect the Project from bias or the appearance of bias. Borrower certifies that its conflict of interest policies and procedures comply with Code of Federal Regulations Title 45, Part 94 and Ohio Revised Code §§102.03, 2921.42, 2921.43, and 3345.14. Notwithstanding the foregoing, the Director acknowledges and agrees that members of the Borrower and certain of their affiliates may invest in companies in which the Borrower invests.

3.3. Survival of Representations and Warranties. The Borrower agrees that all of the representations and warranties set forth in Section 3.2 and elsewhere in the Loan Documents are true as of the date hereof, will be true on the Closing Date. Each request for a disbursement of Loan Funds under the Loan Documents shall constitute a reaffirmation of such representations and warranties, as deemed modified in accordance with the disclosures made and approved as aforesaid, as of the date of such request. It shall be a condition precedent to the closing of the Loan and each disbursement of Loan Funds that each of said representations and warranties is true and correct as of the date of such requested disbursement. At the Director's request, the Borrower shall reaffirm such representations and warranties in writing prior to any disbursement hereunder.

Section 4. Additional Covenants and Agreements

4.1. Project Objectives. The Borrower has represented that the Loan will permit the Borrower to complete the Project in accordance with Exhibit V, including, but not limited to, reviewing investment opportunities and performing due diligence on investment candidates to make investments pursuant to the Program requirements in the focus areas of Advanced Materials related to advanced polymers, ceramics, composites, carbon fibers and nanotubes, and specialty metals and alloys; Agribusiness and Food Processing; Aero propulsion Power Management; Fuel Cells and Energy Storage; Medical Technology related to imaging, surgical instruments/equipment, implant devices, and regenerative medicine; Sensing and Automation Technologies; Situational Awareness and Surveillance Systems; Software Applications for business and healthcare; and Solar Photovoltaics.

4.2. Affirmative Covenants of the Borrower. Throughout the term of this Agreement, the Borrower shall:

- (a) **Taxes and Assessments.** Pay and discharge promptly, or cause to be paid and discharged promptly, when due and payable, all taxes, assessments and governmental charges, levies or claims imposed upon it, its income or any of its property, or upon any part thereof, as well as all claims of any kind (including claims for labor, materials and supplies) which, if unpaid, might by law become a lien or charge upon its property. Upon request, Borrower shall furnish to the Director evidence that taxes and insurance premiums are paid.

Notwithstanding the preceding paragraph, the Borrower may, at the Borrower's expense and after prior notice to the Director, by appropriate

proceedings diligently prosecuted, contest in good faith the validity or amount of any such taxes, assessments, governmental charges, levies and claims and during the period of contest, and after notice to the Director, may permit the items so contested to remain unpaid, provided, that the Borrower has set aside on its books adequate reserves with respect thereto in accordance with generally accepted accounting principles. If the Borrower fails to commence such contest or, having commenced to contest the same, or shall thereafter fail to prosecute such contest in good faith or with due diligence, or, upon adverse conclusion of any such contest, shall fail to pay such tax, assessment or charge, the Director may, at the Director's election (but shall not be required to), pay and discharge any such tax, assessment or charge, and any interest or penalty thereon, and any amounts so expended by the Director shall be deemed to constitute disbursements of the Loan proceeds hereunder (even if the total amount of disbursements would exceed the Loan Funds).

- (b) Maintain Existence. Do or cause to be done all things necessary to preserve and keep in full force and effect its existence in the same form as of the Closing Date.
- (c) Due Diligence. Undertake appropriate due diligence prior to presenting or consummating any transactions.
- (d) Furnish Information. Borrower shall submit to Director all fiscal and programmatic reports as and when specified in Exhibit I and/or Exhibit V during the Term of the Agreement. Additionally, Borrower shall submit the following reports to Director:
 - (i) Quarterly Reports. For the Term of this Agreement, within 30 days after the end of each calendar quarter, a progress report covering the Borrower's activities on the Project during such calendar quarter.
 - (ii) Annual Reports. For the Term of this Agreement, within 120 days after the end of each fiscal year of the Borrower, a copy of its audited or reviewed financial statements, including the balance sheet of the Borrower as at the end of such fiscal year, together with related statements of income, retained earnings and cash flows for such fiscal year, setting forth in comparative form the corresponding figures as at the end of or for the previous fiscal year, all in reasonable detail and all reviewed by its independent certified public accountants and prepared in accordance with the generally accepted accounting principles consistently applied, and present fairly the Borrower's financial position at the close of such periods and the results of its operations for such periods. The Annual Reports shall include a compliance supplement reviewed and reported by the Borrower's

independent accountants which confirms the process by which the Borrower obtains information that accurately sets forth for each company supported by the Project: (a) job creation by reporting jobs existing prior to the date of the Borrower's initial investment in the company and jobs created after the date of the Borrower's initial investment in the company (confirmed, for instance, by aggregate payroll matching financial information and employee lists); (b) equity investment prior to the date of the Borrower's initial investment in the company and subsequent follow-on investment (confirmed, for instance, by capitalization tables and shareholder registries); and (c) the number of new licenses, patents and other intellectual property rights memorialized after the date of the Borrower's initial investment in the company (confirmed, for instance, by copies of agreements or filings).

- (iii) Certificate; No Default. With each of the financial reports required to be furnished under this Section, a certificate of the Borrower's chief executive officer, chief financial officer, or managing member in the form attached hereto as Exhibit C, stating that (a) no Event of Default has occurred and is continuing and no event or circumstance which would constitute an Event of Default, but for the requirement that notice be given, time elapse or otherwise, has occurred and is continuing, or, if such an Event of Default or such event or circumstance has occurred and is continuing, a statement as to the nature thereof and the action which the Borrower has taken or proposes to take with respect thereto, that (b) no action, suit or proceeding by Borrower or against Borrower at law or in equity, or before any Governmental Authority, is pending or, to the knowledge of Borrower threatened, which, if adversely determined, would materially impair the right or ability of the Borrower to carry on its business or would materially impair the right or ability of the Borrower to perform its obligations under the Loan Documents or would materially and adversely affect its business, operations, properties, assets or condition, and that (c) no material adverse change has occurred with respect to the Borrower or its business or financial condition, all as of the date of such certificate, except as disclosed in such certificate.
- (iv) Closeout Report. Within 60 days after repayment of the Loan Funds, Borrower shall submit to Director a Closeout Report setting forth a final accounting for the Project including, without limitation, the total expenditure of Loan Funds by Borrower, and a reasonably detailed description of the status of the Project at the time of termination.
- (v) All other reports. For the Term of this Agreement, Borrower shall



provide to Director, any and all material reports, notices or documents provided to its investors or third parties.

- (vi) Evidence of Use of Loan Proceeds. Upon request of the Director, the Borrower shall provide evidence of the uses of the proceeds of the Loan and make available to the Director, upon reasonable request, all books and records related to the uses of the proceeds of the Loan.
 - (vii) Other Information. Such other information as the Director may reasonably request.
- (e) Borrower acknowledges that the availability of the Key Personnel identified in Exhibit V to perform activities in connection with the Project is a material condition for the award of Loan Funds. Accordingly, Borrower shall notify Director not later than seven days after any Key Personnel becomes unavailable to perform the tasks contemplated by Exhibit V to be performed by such individual. For purposes of this Agreement, an individual will be “unavailable” to the Project if (a) the individual’s employment or agreement to provide services to Borrower is terminated for any reason, (b) the individual’s duties are changed so as to remove him/her from Project work or activities, (c) during any calendar month, the individual’s hours spent on or available to be spent on work or activities related to the Project are reduced for any reason by more than 25% of the time contemplated in Exhibit V, or (d) a position for any Key Personnel is vacant on the Effective Date and remains vacant for more than 90 days after the Effective Date.
- (f) Deliver Notice. Promptly upon learning of any of the following, deliver written notice thereof to the Director, describing the same and the steps being taken by the Borrower with respect thereto:
- (i) The closing or liquidation of the Borrower; or
 - (ii) The occurrence of an Event of Default or an event or circumstance which would constitute an Event of Default, but for the requirement that notice be given, elapse of time or otherwise; or
 - (iii) Any action, suit or proceeding by Borrower or against Borrower at law or in equity, or before any Governmental Authority, instituted or threatened which, if adversely determined, would materially impair the right or ability of the Borrower to perform its obligations under the Loan Documents; or
 - (iv) The occurrence of a Reportable Event under, or the institution of steps by the Borrower to withdraw from, or the institution of any steps to terminate, any Plan as to which the Borrower may have liability; or



- (v) Any communication affecting the Borrower in a materially adverse manner, and the Borrower will promptly respond fully to any inquiry of the Director made with respect thereto; or
 - (vi) Any adverse report in the public domain regarding one of Borrower's portfolio companies; or
 - (vii) Any litigation, arbitration, action, investigation or other proceeding commenced against any of Borrower's portfolio companies that is reasonably likely to have a material adverse effect on the portfolio company. For the avoidance of doubt, (A) any investigation or action by a governmental entity or regulatory body, or (B) any proceeding, in each case, alleging fraud, illegal payments, corrupt practices, securities violations or knowing violations of the law shall be deemed material and shall trigger the notice obligation under this paragraph; or
 - (viii) Any circumstances inconsistent with Borrower's application and materially affecting performance under this Agreement; or
 - (ix) If Borrower determines that its Cost Share commitment under this Agreement will not be satisfied.
- (g) Inspection Rights. Upon reasonable prior written notice and during regular business hours, permit the Director, or any agents or representatives thereof, to examine and make copies of and abstract from the records and books of account of, and visit the properties of, the Borrower and discuss the general business affairs of the Borrower with any of its officers.
- (h) Accounting; Records. Loan Funds shall be recorded separately in the books and records of the Borrower. Borrower shall keep its books in a manner consistent with generally accepted accounting principles. Borrower shall establish and maintain for at least three years after the Project Completion Date or other termination of this Agreement such records regarding this Agreement, the Loan Funds, the Cost Share Amount and the Project as Director may require from time to time, including, without limitation, financial reports, and intake and participant information.
- (i) Compliance With Laws and Program Requirements. Borrower shall comply in all material respects with all applicable federal, state and local laws in the conduct of the work supported by Loan Funds. Neither Borrower nor any of its employees are or shall be deemed to be employees of Director for any purpose including, without limitation, application of the Fair Labor Standards Act minimum wage and overtime payment provisions, the Federal

Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any state or local revenue or tax laws, state workers' compensation laws and state unemployment insurance laws. Borrower accepts full responsibility for payment of all taxes including, without limitation, unemployment compensation insurance premiums, all income tax withholding, Social Security withholding, and any and all other taxes or payroll withholding required for all employees engaged by Borrower in the performance of the work supported by Loan Funds. The Borrower shall comply with requirements applicable to the Borrower which are imposed on the Borrower or the Director in connection with the Program.

- (j) Ethics. Borrower, by its signature on this document, certifies: (1) it has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 *et seq.*, §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (2) will take no action inconsistent with those laws, as any of them may be amended or supplemented from time to time. Borrower understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of this Agreement and may result in the loss of other contracts or Loans with the State.
- (k) Workplace Environment. Borrower shall comply in all material respects with all applicable federal, state, and local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that any of its employees or permitted subcontractors engaged in the work being performed in connection with the Project do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- (l) Human Subjects. To the extent applicable, in all cases in which activities involving human subjects are planned in connection with the Project, Borrower must abide by all applicable federal and state rules and regulations governing studies of human subjects at the participating organizations. If the Project contemplates activities involving human subjects, Borrower certifies that Institutional Review Board (IRB) approval for this Project is current (within one year of the Effective Date of this Agreement), IRB approval shall be renewed each year the Project is active, and any modifications in the Program Plan section of the Proposal must be approved by the IRB. Borrower certifies that its policies and procedures for human subjects comply with the Code of Federal Regulations, Title 45, Part 46.
- (m) Animal Subjects. To the extent applicable, in all cases in which activities involving animal subjects are planned, Borrower must abide by all applicable federal and state rules and regulations governing studies of animal subjects at the participating organizations. If the Project contemplates activities involving animal subjects, Borrower certifies that Institutional Animal Care



and Use Committee (IACUC) approval for this Project is current (within three years of the Effective Date of this Agreement). IACUC approval shall be renewed every three years the Project is active. Any modifications in the Program Plan section of the Proposal must be approved by the IACUC. Borrower certifies that its animal subject policies and procedures comply with the US Code Title 7, §§ 2131-2156, inclusive.

- (n) Aborted Fetuses. To the extent applicable, in accordance with Ohio Revised Code § 2919.14, Loan Funds shall not be used for research involving tissue obtained from aborted fetuses.
- (o) Exclusivity. During the Term, Borrower agrees to provide the services covered by this Agreement exclusively for the benefit of increasing the availability of professionally managed capital and associated services to accelerate the growth of early-stage Ohio technology companies throughout Ohio.
- (p) Acknowledgements. Borrower shall acknowledge support provided by the State for the Project in the circumstances listed in Exhibit I. Any such acknowledgment shall be in the form set forth in Exhibit I or as otherwise expressly approved by Director in writing.

4.3. Negative Covenants of the Borrower. Throughout the term of this Agreement, the Borrower shall not:

- (a) Transfers. Sell, transfer or otherwise dispose of all, or substantially all, of its assets, consolidate with or merge into any other entity, or permit one or more entities to consolidate with or merge into it; *provided, however*, that the Borrower may, without violating the agreement contained in this subsection (a), consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell, transfer or otherwise dispose of all, or substantially all, of its assets and thereafter dissolve if: (i) the prior written consent of the Director is obtained; (ii) the surviving, resulting or transferee entity, as the case may be, assumes in writing all of the obligations of the Borrower hereunder (if such surviving, resulting or transferee entity is other than the Borrower); and (iii) the surviving, resulting or transferee entity, as the case may be, is an entity duly organized and validly existing under the laws of the State or duly qualified to do business therein, and has a net worth of not less than that of the Borrower immediately prior to such disposition, consolidation or merger, transfer or change of form.
- (b) ERISA. Voluntarily terminate any Plan maintained for employees of the Borrower, so as to result in any material liability of the Borrower to the PBGC, enter into any Prohibited Transaction involving any Plan which results

in any material liability of the Borrower to the PBGC, cause any occurrence of any Reportable Event which results in any material liability of the Borrower to the PBGC, or allow or suffer to exist any other event or condition which results in any material liability of the Borrower to the PBGC.

- (c) Agreements. Enter into any agreement containing any provision which would be violated or breached by the performance of its obligations hereunder or under any instrument or document delivered or to be delivered by it hereunder or in connection herewith.
 - (d) Assignment. In whole or in part, assign this Agreement without the prior written consent of the Director.
 - (e) Suspension of Operation. Suspend or discontinue operation of its business.
 - (f) Change of Business. Enter into any business which is substantially different from that presently conducted by the Borrower without the prior written consent of the Director
 - (g) Governing Instruments. Without prior notice to the Director, permit or suffer a material amendment or modification of its Governing Instruments.
 - (h) Shareholder Loans. Except as set forth in Section 2.4, pay, or otherwise make a distribution as satisfaction for, principal or interest on any loan made to the Borrower by an officer, director or holder of the Borrower's equity securities so long as this Loan is outstanding. The Borrower shall not make loans to any officer, director or holder of the Borrower's equity securities.
- 4.4 Use of Loan Proceeds. Borrower shall be responsible for performing the Project as set forth in Exhibit V, and Borrower shall use the Loan Funds only for obligations incurred in the performance of the Project. All expenditures of Loan Funds and the Cost Share Amount shall be invested by the Deadline Date, unless extended pursuant to Section 2.6. All proceeds of the Loan shall be used solely for Permitted Expenditures and in no event shall such proceeds be used for (i) the payment of delinquent federal or state income taxes, (ii) the reimbursement of tax payments held in escrow, (iii) the reimbursement of payments to, or reimbursement of payments to a stockholder of the Borrower, (iv) the redemption of the stock or other ownership interests of the Borrower and in no event shall the Budget for Permitted Expenditures include investment in commercial real estate ownership or lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-75, as amended). If Loan Funds or the Cost Share Amount are not expended in accordance with the terms and conditions and within the time period set forth in this Agreement, or if the total amount of Loan Funds exceeds the eligible costs of the Project, the amount of any Loan Funds improperly expended or in



excess of eligible costs shall be returned to Director within 90 days of notice or any earlier termination of this Agreement.

Section 5. Events of Default and Remedies; Termination

5.1. Events of Default. Each of the following shall be an “Event of Default”:

- (a) The Borrower shall fail to pay within ten days after the due date thereof any amount payable pursuant to this Agreement or under any other Loan Documents, and such failure continues for a period of 10 days after Director has provided Borrower written notice thereof; or
- (b) Except as specifically set forth in any other subsection of this Section 5.1, the Borrower shall fail to observe and perform any act, agreement, term or condition contained in this Agreement including, without limitation, failure to complete the Project as set forth in Exhibit V or failure to expend the Cost Share Amount as provided in this Agreement, other than as provided in subsection (a) above, and such failure continues for a period of 30 days after the Borrower has knowledge thereof; *provided, however*, that such 30 day cure period shall not apply to (i) any failure which in the good faith opinion of the Director is incapable of cure, (ii) any failure which has previously occurred, or (iii) any failure to maintain and keep in effect any insurance required by the Loan Documents; or
- (c) Any representation or warranty made by the Borrower herein or in any other Loan Documents or in connection therewith shall prove to have been incorrect in any material respect when made; or
- (d) The Borrower shall fail to pay any other indebtedness for borrowed money of the Borrower which exceeds \$25,000, or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, by acceleration, on demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such indebtedness; or any other default under any agreement or instrument relating to any such indebtedness, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such indebtedness; or any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or
- (e) The Borrower commences a voluntary case concerning it under Title 11 of the United States Code entitled “Bankruptcy” as now or hereafter in effect, or any successor thereto (the “Bankruptcy Code”); or an involuntary case is

commenced against the Borrower under the Bankruptcy Code and relief is ordered against the Borrower, or the petition is controverted but is not dismissed within 60 days after the commencement of the case; or the Borrower is not generally paying its debts as such debts become due; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of the Borrower; or the Borrower commences any other similar proceeding under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect; or there is commenced against the Borrower any such proceeding which remains undismissed for a period of 60 days; or the Borrower is adjudicated insolvent or bankrupt; or the Borrower fails to controvert in a timely manner any such case under the Bankruptcy Code or any such proceeding or any order of relief or other order approving any such case or proceeding or in the appointment of any custodian or the like of or for it or any substantial part of its property or suffers any such appointment to continue undischarged or unstayed for a period of 60 days; or the Borrower makes a general assignment for the benefit of creditors; or any action is taken by the Borrower for the purpose of effecting any of the foregoing; or a receiver or trustee or any other officer or representative of the court or of creditors, or any court or Governmental Authority, shall under color of legal authority, take and hold possession of any substantial part of the property or assets of the Borrower for a period in excess of 60 days; or

- (f) A judgment or order for the payment of money in excess of \$50,000 shall be rendered against the Borrower and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or
- (g) The Borrower fails to meet its minimum funding requirements under Section 301 *et seq.* of ERISA, with respect to any of its Plans; or
- (h) Borrower shall have 120 days to replace any Key Personnel who becomes unavailable to the Project for any reason. In the event any Key Personnel are not replaced, as required by Section 4.2(e), within such 120 days after such key personnel became unavailable to the Project or if any vacancy is not filled as described in Section 4.2(e), Borrower shall be in default of this Agreement; or
- (i) Any default (other than set forth above) under any other Loan Document shall have occurred and be continuing, after giving effect to any applicable grace or cure period, if any, and if no grace or cure period is specified, then 30 days after Director has provided Borrower written notice thereof;



provided, however, that such 30 day cure period shall not apply to any failure which is incapable of cure.

5.2. Remedies on Default. Whenever an Event of Default shall have occurred and be continuing, any one or more of the following remedial steps may be taken:

- (a) If the entire amount of Loan Funds have not been disbursed, the Director may terminate any and all of the Director's obligations to provide additional Loan Funds under this Agreement;
- (b) The Director may declare all payments under this Agreement to be immediately due and payable, whereupon the same shall become immediately due and payable;
- (c) If during the 30 day cure period Borrower determines that it will be unable to complete the Project as set forth in Exhibit V and Borrower has not then received from Director all of the Loan Funds, Borrower may propose changes to the Project (the "Revised Project"). Any Revised Project must be proposed in writing to Director prior to the expiration of the cure period. Director, in its sole discretion, may accept or reject the Revised Project. If the Revised Project is accepted by Director, the Revised Project shall be deemed to constitute a cure of Borrower's non-performance and the Parties shall execute a written amendment to this Agreement consistent with the terms and conditions of Director's acceptance of the Revised Project. Thereafter, the award of Loan Funds pursuant to this Agreement shall be deemed to have been made for completion of the Revised Project. If the Revised Project is rejected by Director and Borrower has not otherwise cured its defaults, then this Agreement may be terminated as set forth in this Section 5.2;
- (d) The Director may increase the annual interest rate on the outstanding balance of the Loan but in no event may that increase be to a rate in excess of ten percent (10%);
- (e) In the event the Agreement is terminated by Director as a result of a Borrower default, Borrower shall repay to Director all of the Loan Funds disbursed to Borrower through the termination date, plus interest;
- (f) The Director may exercise any or all of the remedies specified in any Loan Document; or
- (g) The Director may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement or any other Loan Documents, or to enforce the performance and observance of any other obligation or agreement of the Borrower under the Loan Documents.

Upon an Event of Default occurring as a result of the Borrower's failure to deliver the Annual Reports required to be delivered to the Director pursuant to Section 4.2(d)(ii), then in addition to any remedies the Director shall have under this Agreement, the Borrower shall pay to the Director liquidated damages calculated at the rate of \$500.00 for each calendar month (or part thereof) such Annual Report is not delivered after the date it has become due.

5.3. No Remedy Exclusive. Except as otherwise provided herein, no remedy conferred upon or reserved to the Director by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, each other Loan Document, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Director to exercise any remedy reserved to the Director in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly provided for herein or required by law.

5.4. Agreement to Pay Expenses and Attorneys' Fees. If an Event of Default shall occur and the Director shall incur expenses, including reasonable attorney's fees, in connection with the enforcement of this Agreement or any other Loan Document, or the collection of sums due thereunder, the Borrower shall reimburse the Director for the expenses so incurred upon demand.

5.5. No Waiver. No failure by the Director to insist upon the strict performance by the Borrower of any provision hereof shall constitute a waiver of the Director's right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Borrower to observe or comply with any provision hereof.

Section 6. Miscellaneous

6.1. Term of Agreement. This Agreement shall be and remain in full force and effect from the Effective Date until (a) the termination of this Agreement pursuant to Section 5.2(a) hereof or (b) the Project Completion Date (10 years from the Closing Date).

6.2. Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when (a) mailed by registered or certified mail, postage prepaid, (b) addressed to the appropriate Notice Address and (c) included the name and address of the Borrower and the Loan number assigned to the Loan by the Director. The Borrower or the Director may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. All notices delivered to the Director in accordance

with this Section shall also be delivered to the Office of the Chief Legal Counsel at its Notice Address.

6.3. Travel Expenses. If travel expenses were included as part of the Due Diligence and Enhanced Management Fees in the proposed budget in Exhibit V, the travel expenses are subject to the Travel Policy of the State of Ohio. Any reimbursement of travel expenses made by Borrower in connection with the Project shall be subject to the travel reimbursement rates, limitations, restrictions, and exclusions imposed by Ohio Administrative Code 126-1-02 and any other rules imposed by the Ohio Office of Budget and Management, as such rules may be amended from time to time.

6.4. Extent of Covenants of the Director; No Personal Liability. All covenants, obligations and agreements of the Director contained in this Agreement and all other Loan Documents shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future Director in other than such Director's official capacity.

6.5. Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Director, the Borrower and their respective successors and assigns; *provided, however*, the Borrower may not assign this Agreement or any of the Loan Documents without the prior written consent of the Director (except as provided herein), which may be withheld for any reason. Any assignment not made in accordance with this Section shall be void.

6.6. Amendments and Supplements. Either Party may at any time during the Term of this Agreement request amendments or modifications to this Agreement. Requests for amendment or modification shall be made in writing and shall specify the requested changes and the justification for such changes. The Parties shall review the request for modification taking into account regulations applicable to the Program and the status and goals of the Project. If the Parties determine that the Agreement should be so amended, an amendment shall be written, approved, and executed by the Director and the Borrower. Director reserves the right to reject any request for Project change. Borrower agrees that it will pay or reimburse Director for any and all costs associated with any technical review required, if any, by Director in connection with any requested Project change whether or not the revision is approved.

6.7. Execution Counterparts/PDF. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument. Copies of signatures sent by facsimile transmission or provided electronically in portable document format ("PDF") shall be deemed to be originals for purposes of execution and proof of this Agreement.

6.8. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein, is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were



not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

6.9. Captions; Entire Agreement. The captions and headings in this Agreement shall be solely for convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement. All exhibits and schedules to this Agreement shall be annexed hereto and shall be deemed to be part of this Agreement. This Agreement and the exhibits and schedules attached hereto and the Loan Documents embody the entire agreement and understanding between the Director and the Borrower and supersede all prior agreements and understandings relating to the subject matter hereof.

6.10. Interpretation. This Agreement shall be deemed to have been prepared jointly by the parties hereto and any uncertainty or ambiguity existing herein shall not be interpreted against any party but shall be interpreted according to the rules for the interpretation of arm's length agreements.

6.11. Waiver of Jury Trial. THE BORROWER AND THE DIRECTOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS LOAN AGREEMENT OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER OF THEM. NEITHER THE BORROWER NOR THE DIRECTOR SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY THE BORROWER OR THE DIRECTOR EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY BOTH OF THEM.

6.12. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio.

6.13. Jurisdiction. THE BORROWER IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF COLUMBUS, COUNTY OF FRANKLIN AND STATE OF OHIO, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS



AGREEMENT SHALL PRECLUDE THE DIRECTOR FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. THE BORROWER FURTHER AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY OHIO STATE OR UNITED STATES COURT SITTING IN THE CITY OF COLUMBUS AND COUNTY OF FRANKLIN MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE BORROWER AT ITS NOTICE ADDRESS, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF THE BORROWER SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

6.14. Survival. The provisions of this Agreement and any documents delivered pursuant to this Agreement shall expire upon the repayment of all Disbursed Loan Funds.

6.15. Equal Employment Opportunity. In performing this Agreement, Borrower shall not discriminate against any employee, applicant for employment or other person because of race, religion, color, sex, national origin, disability, age, military status, or ancestry. Borrower will take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to race, religion, color, sex, national origin, disability, age, military status, or ancestry. Borrower shall incorporate the requirements of this paragraph in all of its contracts for any of the work or activities undertaken as part of the Project.

6.16. Certification of Funds Available. None of the rights, duties and obligations described in this Agreement shall be binding on either Party until all statutory provisions of the Ohio Revised Code, including, without limitation, § 126.07, have been complied with, and until such time as all funds have been made available and are forthcoming from the appropriate State agencies.

6.17. Mutual Agreement. Director and Borrower may agree in writing to modify or terminate this Agreement.

6.18. Acceptance. By the signature of its legal representative below, Borrower confirms its acceptance of Director's loan on the terms and subject to the conditions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first written above.



DIRECTOR:

Ohio Development Services Agency,
acting on behalf of the State of Ohio
David Goodman, Director

By: _____

Title: _____

BORROWER:

_____, _____,
an Ohio [limited liability company]

By: _____

Title: _____



Schedules:

Schedule 1 - Master List of Definitions

Schedule 2 - Legal Opinion Requirements

Exhibits:

Exhibit I – Statement of Conditions

Exhibit III – Cost Share Guidelines

Exhibit IV – Certification Accompanying Financial Reports

Exhibit VI – Letter to Borrower Regarding Reporting Requirements

The following Exhibits are not attached to the Agreement but are incorporated into it by reference.

Exhibit II – Request for Proposals, if applicable

Exhibit V – Proposal, As Amended