

STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DELAWARE ECONOMIC DEVELOPMENT OFFICE

**Overnight Delivery**

June 15, 2017

Ms. Pam Fluette  
Tidemark Federal Credit Union  
1941 Bridgeville Highway  
Seaford, DE 19973

RE: Delaware Access Program Master Agreement

Dear Ms. Fluette:

Enclosed you will find two original Master Agreements for the Delaware Access Program. These documents have been signed by the Chairperson of The Delaware Economic Development Authority, Cerron Cade.

Please **execute, date and return** to the Authority at the Dover address, one original of the enclosed Agreement.

The Authority is pleased to be working with you. Please feel free to contact me or Jordan Schulties if you have any questions or comments concerning this matter.

Kind regards,

A handwritten signature in cursive script that reads "Amber Mudri".

Amber Mudri  
Portfolio Administrator and Business Service Coordinator

AM

Enclosure

## DELAWARE ACCESS PROGRAM MASTER AGREEMENT

This AGREEMENT is entered into this 16<sup>th</sup> day of June, 2017, by and between The Delaware Economic Development Authority, a body, politic and corporate in the State of Delaware, whose address is 99 Kings Highway, Dover, Delaware 19901 ("DEDA"), and ***Tidemark Federal Credit Union***, a commercial financial institution whose primary address is ***1941 Bridgeville Highway, PO Box 1800, Seaford, Delaware 19973*** (the "Lender").

### RECITALS

WHEREAS, DEDA has been created by the General Assembly of the State of Delaware in Title 29, Delaware Code, Chapter 50, Subchapter IV, (the "Code") with the power to provide portfolio loan insurance for endeavors relating to industrial, commercial or agricultural enterprise; and

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

WHEREAS, DEDA has determined that providing portfolio loan insurance will promote and serve the intended purposes of and in all respects will conform to the provisions and requirements of the Code; and

WHEREAS, DEDA and the Lender desire to set forth the terms and conditions of the loan insurance that will apply if the Lender decides to make loans under the Program,

NOW, THEREFORE, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

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

"Affiliate," when describing a relationship with the Lender, shall refer to the same relationship as the relationship between an affiliate and an institution as described in Part 225 of Title 12 of the Code of Federal Regulations including any amendments to such description that may be made from time to time.

"Borrower" means the recipient of a loan from the Lender which is, has been, or will be filed by the Lender for enrollment under the Program.

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

“DEDA Multiplier” means, with respect to one or more categories of Enrolled Loans, the factor (which may be greater than, equal to or less than 1) as DEDA shall have established for Enrolled Loans of such categories from time to time by a notice to the Lender, by which the sum of the premiums paid by the Borrowers and the Lender with respect to such categories of Enrolled Loans shall be multiplied to determine the amount DEDA shall transfer into the Reserve Fund. DEDA may establish different DEDA Multipliers for different categories of Enrolled Loans from time to time. If DEDA has not established a DEDA Multiplier for a particular category of Enrolled Loans, the applicable DEDA Multiplier shall be equal to 1. DEDA may decrease the DEDA Multiplier for a particular category of Enrolled Loans only for Enrolled Loans enrolled after the date of such notice. The DEDA Multiplier for a particular category of Enrolled Loans shall be uniform for all participating lenders under the Program.

“Eligible Loan” means a loan 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 enrolled by DEDA pursuant to the terms of Article IV hereof.

“Program” means the Delaware Access Program established by DEDA pursuant to this Agreement.

“Reserve Fund” means an administrative account maintained by DEDA to account for funds accumulated pursuant to this Agreement to cover losses sustained by the Lender on Enrolled Loans.

“State Small Business Credit Initiative (“SSBCI”) refers to a federal loan participation program to stimulate small business economic development, and for which DEDA has entered into an agreement with the United States Department of the Treasury.

## **ARTICLE II**

### **REPRESENTATIONS**

Section 2.1. Representations by DEDA. With respect to any loan enrolled hereunder, DEDA makes the following representations and warranties as of the time of such enrollment:

- (a) DEDA is a body, politic and corporate, established and acting pursuant to the Code.
- (b) DEDA has the necessary power under the Code, and has duly taken action on its part required to authorize, execute and deliver this Agreement, and properly perform each of its contractual obligations hereunder. This Agreement when executed will be valid, binding and enforceable in accordance with its terms. The execution and performance of this Agreement by DEDA will not violate or conflict with any instrument by which DEDA is bound.

Section 2.2. 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:

- (a) The Lender has obtained from the Borrower the following representations and warranties, and, based on knowledge that the Lender has, the Lender has no substantial reason to believe that such representations and warranties are not true:
- (i) The Borrower is a corporation, partnership, joint venture, sole proprietorship, individual, cooperative, or other entity, whether profit or nonprofit, which is authorized to conduct business in the State of Delaware, and the proceeds of the loan will be used for an endeavor related to industrial, commercial, or agricultural enterprise, or any combination thereof, within the State of Delaware.
  - (ii) The Borrower is not an executive officer, director, or principal shareholder of the Lender, or a member of the immediate family of an executive officer, director 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 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.
  - (iii) If the Lender is requesting SSBCI funds, the Borrower has executed and submitted to the Lender the “Borrower Certification,” attached as **Exhibit 1**.
- (b) The Lender further represents and warrants as follows:
- (i) That the Lender has received from the Borrower a written representation, warranty, pledge and waiver (“Borrower Agreement”), the form of which is attached as **Exhibit 2**, which states that the Borrower has no legal, beneficial or equitable interest in the non-refundable premium charges or any other funds credited to the Reserve Fund established to cover losses sustained by the Lender on Enrolled Loans.
  - (ii) That the Lender has not made the loan in order to place, under the protection provided by the Program, prior debt which is not covered under the Program and which is or was owed by the Borrower to the Lender or to an Affiliate of the Lender.
  - (iii) That the Lender has disclosed to the Borrower information concerning the Program, (“Notice to Borrower”), the form of which is attached as **Exhibit 3**, hereto, or such modified exhibit as may be specified by DEDA.
  - (iv) That the Lender has complied with all federal and state laws, rules and regulations pertaining to the making of loan.
  - (v) For all requests pursuant to the SSBCI funds, the Lender has executed the “Lender Certification,” the form of which is attached as **Exhibit 4**.

### **ARTICLE III**

#### **ESTABLISHMENT OF THE RESERVE FUND**

Upon execution of this Agreement DEDA, shall establish an administrative account in the name of DEDA for the purpose of receiving all required premium charges to be paid by the Lender and the Borrower, and transfers made by DEDA, pursuant to the terms of Section 5.1 hereof. The account shall be called “DEDA Reserve Fund – *Tidemark Federal Credit Union*,” (the “Reserve Fund”).

### **ARTICLE IV**

#### **ENROLLMENT OF LOANS IN PROGRAM**

Section 4.1. 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, and solely for purposes of the transactions described in the Agreement, the amount of the loan shall be considered to be the maximum amount that can be drawn down against the line of credit.

Section 4.2. In order to enroll a loan under the Program, the Lender shall file the loan for enrollment by delivering executed copies of the following documents to DEDA:

- (a) SSCBI Borrower Certification and SSBCI Lender Certification, (when applicable), the Borrower Agreement, and the Notice to Borrower, (Exhibits 1-4.)
- (b) A Loan Filing Form, bearing an execution signature of an authorized officer of the Lender, the form of which is attached as **Exhibit 5**.
- (c) Documentation by Lender of the transmittal of the non-refundable premium charges payable as set forth in Section 5.1 in connection with the loan, by the Lender and the Borrower, (“Transmittal Form”), the form of which is attached as **Exhibit 6**.
- (d) Supporting loan documentation including, but not limited to: business loan agreement, note, guaranty, security agreement, and underwriting approval documents specifying the use of the Enrolled Loan proceeds, the form of which is attached as **Exhibit 7**.
- (e) The Lender shall file the loan for enrollment within twenty (20) days after the Lender makes the loan. For the purposes of this Agreement, the date on which the Lender makes a loan shall be deemed to be the date on which the Lender first disburses proceeds of the loan to the Borrower, or such earlier date on which the loan documents have been executed and the Lender has obligated itself to disburse proceeds of the loan. For the purposes of this Agreement the filing of a loan for enrollment shall be deemed to occur on the date of receipt by DEDA of the Loan Enrollment Form.

Section 4.3. Upon receipt by DEDA of the documentation identified in Section 4.2 hereof, DEDA shall enroll the loan unless the information provided pursuant to Section 4.2 indicates that the loan is not an Eligible Loan, and shall mail or otherwise promptly deliver to the Lender an

acknowledgement of enrollment, bearing the execution signature of an authorized representative of DEDA, including documentation of the amount being transferred by DEDA into the Reserve Fund pursuant to Section 5.1.

Section 4.4. When filing a loan for enrollment, the Lender may specify an amount less than the total amount of the loan to be insured under the Program.

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

Section 4.6. In the event that an Enrolled Loan is refinanced, and the total amount to be covered under the Program does not exceed the covered amount of the loan as previously enrolled, the loan, as refinanced, may continue as an Enrolled Loan, and there shall be no additional premium charges payable, or transfers to be made by DEDA, into the Reserve Fund. If the refinancing of a loan under this Section results in the outstanding balance of an Enrolled Loan being increased, the Lender at the time of such refinancing shall be deemed to have made, with respect to such refinanced loan, the representations and warranties specified for the Lender in Section 2.2(a) and Section 2.2(b)(ii) and (iv) hereof.

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

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

Section 4.9. If the outstanding balance of an Enrolled Loan which is not a line of credit is reduced to zero, such loan shall no longer be considered an Enrolled Loan. If an Enrolled Loan which is a line of credit has an outstanding balance of zero and the Lender has determined not to extend further credit or funding, such line of credit shall no longer be considered an Enrolled Loan.

Section 4.10. On or before February 15, May 15, August 15 and November 15 of each year, the Lender shall file a report with DEDA indicating the number and outstanding balances (individually and in the aggregate) of all Enrolled Loans as of the immediately preceding December 31, March 31, June 30 or September 30, as the case may be. Such report shall not be required for any March 31, June 30, September 30 or December 31 if the balance in the Reserve Fund as of that date is zero. In computing the outstanding balances of Enrolled Loans, the balance of any Enrolled Loan shall in no event be considered to be greater than the covered amount of the respective loan as enrolled.

## **ARTICLE V**

### **USE OF THE RESERVE FUND**

Section 5.1. Payments and Transfers to the Reserve Fund. The premium charges payable to the Reserve Fund by the Lender and the Borrower in connection with a loan being filed for enrollment with DEDA pursuant to Section 4.2 shall be prescribed by the Lender. If the Lender is requesting SSBCI funds, the amount paid by the Borrower and Lender combined shall not be less than or greater than the respective minimum and maximum amounts established by DEDA and as set forth in the Policies and Procedures for the Delaware Access Program. DEDA agrees to provide notice of any change with respect to such minimum and maximum amounts, and the notice shall be effective for all loans enrolled 30 days after the effective date of such notice. The amount paid by the Lender shall be equal to the amount paid by the Borrower. The Lender may recover from the Borrower the cost of the Lender's payment, in any manner in which the Lender and Borrower agree. When enrolling a loan under Article IV, DEDA shall transfer into the Reserve Fund, from available funds that have been allocated by DEDA to the Program, an amount equal to the combined premiums being paid into the Reserve Fund by the Lender and the Borrower multiplied by the applicable DEDA Multiplier.

The maximum amount to be transferred into the Reserve Fund by DEDA with each Enrolled Loan shall be \$30,000 unless pursuant to a written request by the Lender DEDA approves, in writing, the transfer of an amount in excess of \$30,000. The maximum amount to be transferred into the Reserve Fund by DEDA over any three (3) year period in connection with any one Borrower, or any group of Borrowers among which a common enterprise exists, shall be \$90,000 unless pursuant to a written request by the lender DEDA approves, in writing, the transfer of an amount in excess of \$90,000. For the purpose of this paragraph, the term "common enterprise" shall have the same meaning given to it in Part 32 of Title 12 of the Code of Federal Regulations, including amendments of such Part 32 which may be made from time to time.

Section 5.2. Ownership, Control and Investment of Reserve Fund. All funds credited to the Reserve Fund shall be the exclusive property of and solely controlled by DEDA, unless and until otherwise paid to the Lender by DEDA in accordance with the applicable provisions of this Agreement. Notwithstanding the foregoing, DEDA may not withdraw funds from the Reserve Fund except as is specifically provided for in this Agreement. If funds in the Reserve Fund are not deposited by DEDA in an account at the Lender, they shall be invested or reinvested by DEDA in a) direct obligations of the United States of America or the State of Delaware, or in obligations the principal and interest of which are unconditionally guaranteed by the United States of America or the State of Delaware or, b) a deposit account at a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation. Interest or income earned on the funds credited to the Reserve Fund shall be deemed to be part of the Reserve Fund.

Section 5.3. Claims by Lender to Reserve Fund. If the Lender charges off all or part of an Enrolled Loan, the lender may file a Claim with DEDA by submitting a completed claim request ("Claims Request"), a form of which is attached as **Exhibit 8**, or such modified exhibit as may be specified by DEDA, bearing the execution signature of an authorized officer of the Lender. Any Claim that is filed hereunder shall be filed contemporaneously with the action of the Lender to charge off all or part of the Enrolled Loan. Lender's Claim may include the amount of principal charged off plus accrued interest. The amount of principal and accrued interest included in the Claim shall not exceed

the principal amount covered under the Program upon enrollment, plus accrued interest attributable to such covered amount. The Lender shall determine when and how much to charge off on an Enrolled Loan in a manner consistent with its normal method for making such determinations on business loans which are not Enrolled Loans. If the Lender files two (2) or more Claims contemporaneously, and if there are insufficient funds in the Reserve Fund at that time to cover the entire amounts of such Claims, the Lender may designate the order or priority in which DEDA shall pay such claims in accordance with Section 5.4.

Section 5.4. Disbursement of Reserve Fund. Notwithstanding the violation of any other provision of this Agreement by the Lender, upon receipt by DEDA of a Claim filed by the Lender in accordance with Section 5.3, DEDA shall promptly pay from funds in the Reserve Fund, such Claim as submitted, except that DEDA may reject a Claim when the representations and warranties provided by the Lender in Section 2.2 hereof were known by the Lender to be false at the time the loan was filed for enrollment. If there are insufficient funds in the Reserve Fund to cover the entire amount of the Lender's Claim, DEDA shall pay to the Lender an amount equal to the current balance in the Reserve Fund and such payment shall be deemed to fully satisfy the Claim, and the Lender shall have no other or further right to receive any amount from the Reserve Fund with respect to such Claim.

Section 5.5. Recovery by Lender subsequent to Claim. If subsequent to payment of Claim by DEDA, the Lender shall recover from a Borrower any amount for which payment of the Claim was made, the Lender shall promptly pay to DEDA for deposit in the Reserve Fund such amount recovered. The Lender shall only be required to pay to DEDA, for deposit in the Reserve Fund, amounts in excess of the amount of recovery needed to fully cover the Lender's loss on an Enrolled Loan. For the purposes of this Section and Section 5.6, the Lender's loss on an enrolled Loan shall be defined as any losses on the loan involving principal and accrued interest, for the amounts covered under that program, and shall not include principal and accrued interest attributable to principal amounts in excess of the amount covered under the Program.

Section 5.6. Subrogation. Notwithstanding any other provision of this agreement, DEDA shall not exercise its right of subrogation in connection with a particular Claim relative to a particular Enrolled Loan unless DEDA determines, in its sole discretion, that the Lender has not exercised reasonable care and diligence in its collection activities with respect to the loan, or that there is a reasonable basis for believing that the Lender will not exercise such reasonable care and diligence in the future with respect to such collection activities.

If the payment of a Claim pursuant to Section 5.4 has fully covered the Lender's loss on an Enrolled Loan, or if the payment of a Claim pursuant to Section 5.4, when combined with any recovery from the Borrower has fully covered the Lender's loss, DEDA, upon its request, shall be subrogated to the rights of the Lender with respect to any collateral, security or other right of recovery, in connection with the loan, which has not been realized upon by the Lender. The Lender thereafter shall assign to DEDA any right, title or interest to any collateral, security, or other right of recovery in connection with the loan. If such assignment has been made, DEDA shall not be required to undertake any obligations of the Lender pursuant to the Lender's loan documents, except for any obligations directly related to the exercise by DEDA of its assigned rights of recovery in connection with the loan. The Lender agrees that it will fulfill any other obligations it may have under the loan documents in the same manner and to the same degree as required had the assignment not been made. The Lender shall provide DEDA with



all reasonable assistance thereafter as DEDA may request in proceeding with respect to any such collateral, security or other right of recovery, except that such reasonable assistance shall not require the Lender to incur any collection expenses. Any funds received by DEDA as a result of enforcement actions taken with respect to any such collateral, security or other right of recovery, shall be promptly deposited by DEDA in the Reserve Fund.

If DEDA determines that it desires to exercise its right of subrogation in connection with an Enrolled Loan, and would be entitled to exercise such right except for the fact that the Lender's loss has not been fully covered, DEDA, as its option, may pay, from funds in the Reserve Fund, an amount sufficient to result in the Lender's loss being fully covered, notwithstanding the fact that such payment may cover a principal amount not covered under the Program or not included in the Lender's Claim. Upon making such payment pursuant to this subsection, DEDA shall be subrogated to the rights of the Lender in accordance with Section 5.6(a) hereof.

## **ARTICLE VI**

### **WITHDRAWAL OF EXCESS RESERVE FUNDS**

Section 6.1. If for any twenty-four (24) month period the Lender reports, pursuant to Section 4.10 herein, an aggregate outstanding balance of all Enrolled Loans below the outstanding balance in the Reserve Fund, DEDA, in its sole discretion, may withdraw an amount from the Reserve Fund to bring the balance of the Reserve Fund down to the aggregate outstanding balance of all Enrolled Loans. Failure to timely file such reports, for which there is no cure within 30 days of such failure to file, shall subject the account to withdrawal of funds by DEDA.

## **ARTICLE VII**

### **TERMINATION**

Section 7.1. DEDA may terminate its obligation under this Agreement to enroll loans under the program, in its sole discretion with at least 45 days written notice. Such termination shall be applicable on the effective date specified in the notice of termination, except that such termination shall not apply to any loan which is made on or before the date on which the notice of termination is received by the Lender. However, if DEDA is terminating the enrollment of loans not merely for the Lender but instead for all participating lenders under the Program, DEDA shall provide notice of at least ninety (90) days to the Lender. Any terminations under this Section shall be prospective only, and shall not apply to any loans previously enrolled under the Program, except that if a previously enrolled Loan is refinanced, the amount covered under the Program shall not be increased beyond the covered amount as previously enrolled.

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

## **ARTICLE VIII**

### **MISCELLANEOUS**

Section 8.1. Amendments to Agreement. DEDA may, with at least forty-five (45) days notice to the Lender, amend any provision of this Agreement. However, in the absence of the consent of the Lender, no such amendment shall be applicable to loans made prior to the effective date of the amendment, and no such amendment shall diminish Lender's rights with respect to funds in the Reserve Fund as of the effective date of the amendment.

Section 8.2 The Lender shall provide DEDA with such information regarding its participation in the Program as DEDA may reasonably require.

Section 8.3. Inspection of Files. Upon notice to the Lender, DEDA or its designee may inspect the files of the Lender relating to any loans enrolled under the Program during normal business hours of the Lender. DEDA shall maintain the confidentiality of information obtained from such files, to the extent allowed pursuant to 29 Del. C. Ch 100, the "Freedom of Information Act." DEDA agrees to provide notice to Lender in those circumstances in which such confidentiality is not protected by the Freedom of Information Act. Notwithstanding the foregoing, this Section is not intended to limit or preclude the ability of DEDA to exercise its right of subrogation, to withdraw funds from the Reserve Fund pursuant to Section 6.2, or to defend itself in any legal action commenced against DEDA by the Lender or any Borrower.

Section 8.4. Compliance with Applicable Law. The Lender shall comply with all applicable federal and state laws, rules and regulations in connection with the transactions contemplated by this Agreement.

Section 8.5. Limitation of Rights. This Agreement shall be for the exclusive benefit of the Lender and DEDA, and shall not be construed to give any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to the Agreement.

Section 8.6. Severability. If any clause, provision or section of this Agreement is held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.

Section 8.7. Notices. All notices, certificates, requests or other communications hereunder shall be sufficiently given when delivered by messenger, by professional courier service or by registered or certified mail postage prepaid, return receipt requested, addressed as follows:

If to DEDA:	The Delaware Economic Development Authority, 99 Kings Highway, Dover, DE 19901, Attention: Director of Capital Resources
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If to Lender:	Tidemark Federal Credit Union, 1941 Bridgeville Highway, Seaford, DE 19973, Attention: Pam Fluette
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Section 8.8. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

Section 8.9. Reports of Regulatory Agencies. The Lender hereby consents to the transmittal to DEDA, by any financial institution's regulatory agency of the federal or state governments, any information directly relating to the Lender's participation in the Program. DEDA shall hold any information acquired pursuant to this Section strictly confidential, subject to the requirements of 29 Del. C. Ch 100.

Section 8.10. No Personal Liability. No member, officer or employee of DEDA, or Lender, including any person executing this Agreement, shall be liable personally under this Agreement or subject to any personal liability for any reason relating to the execution of this Agreement or the Program.

Section 8.11. Collateral. Except upon the exercise of DEDA's right of subrogation as set forth in Section 5.6, DEDA shall have no legal or equitable interest in any collateral, security, or other right of recovery in connection with any loan enrolled in the program, and therefore, DEDA's consent is not necessary for any amendment to any of the lender's loan documents. This Section shall not be construed to modify any obligation of the Lender to make payments to the Reserve Fund pursuant to Section 5.5.


Section 8.12. Within the context of the objectives of the program, the Lender agrees to exercise reasonable care and diligence in the making and collection of loans under the Program. Lender agrees to an obligation to pursue the collection and recovery of any loan losses that result in a claim filed for payment from the Reserve Fund Lenders obligation will inure as to the enforcement of any and all loan covenants, clauses, and agreements the lender may have with Borrower that provide for the recovery of any and all losses, until all such enforcement actions have proved to be exhausted.

Section 8.13. Captions. The captions in this Agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions or sections of this Agreement.

Section 8.14. Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware.

THE DELAWARE ECONOMIC  
DEVELOPMENT AUTHORITY

TIDEMARK FEDERAL CREDIT UNION

By: 

Its: Authorized Officer

By: 

Its: Authorized Officer

WITNESSED,

WITNESSED,

By: 

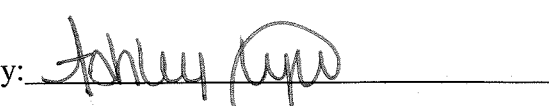
By: 

EXHIBIT 1  
**SSBCI BORROWER CERTIFICATION**

## Small Business Borrower/Investee Certification

This Assurance is referenced by Section 3005(e)(7) and Section 3011 (c)(2) of the Small Business Jobs Act of 2010, and includes any financial institution lender that receives a loan, a loan guarantee, or other financial assistance using funds received by a Participating State under the State Small Business Credit Initiative. This certification is required by Section 3011(c)(2) of the Act from any private entity that receives a loan, a loan guarantee, or other financial assistance using funds received by a participating State under the State Small Business Credit Initiative.

Legal name of borrower or investee:

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The borrower or investee hereby certifies the following to the lender or investor:

1. The loan or investment proceeds will be used for a “business purpose.” Business purpose includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes: activities that relate to acquiring or holding passive investments, such as commercial real estate ownership and the purchase of securities; and lobbying activities, as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.
2. The loan or investment proceeds will not be used to:
  - a. repay a delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority; or
  - b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or
  - c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business’ continuance; or
  - d. to purchase any portion of the ownership interest of any owner of the business.
3. The borrower or investee is not:
  - a. an executive officer, director, or principal shareholder of the lender; or
  - b. a member of the immediate family of an executive officer, director, or principal shareholder of the lenders; or
  - c. a related interest of an such executive officer, director, principal shareholder, or member of the immediate family.

For the purposes 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.

4. The borrower or investee is not:

- a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or
  - b. 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 Institutions; or
  - c. 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
  - d. 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
  - e. a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.
5. As required by Section 3011(c)(2) of the Small Business Jobs Act of 2010, the private entity hereby certifies to the participating State that the Principals of the private entity have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this Certification, Principal means the following: if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.
6. The Borrower currently employs \_\_\_\_\_ Full-Time Employees.
7. The Borrower currently employs \_\_\_\_\_ Delaware Residents.

Legal Name:

\_\_\_\_\_

By: \_\_\_\_\_  
Borrower Authorized Signer

\_\_\_\_\_  
Attest

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT 2  
**BORROWER AGREEMENT**

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

(a) that the loan to be made by \_\_\_\_\_ to the Borrower will be filed for enrollment by the Lender in the Delaware Access Program (the "Program"), a program established by the Delaware Economic Development Office, an agency of the State of Delaware, administered through the Delaware Economic Development Authority (the "DEDA");

(b) that the purpose of the Program is to assist the Lender in making loans that might otherwise not qualify for a loan from the Lender;

(c) that as a condition of having the loan filed for enrollment in the Program, the Borrower is required to pay a non-refundable premium charge to an administrative account called the Reserve Fund, which Reserved Fund is established by DEDA to help cover losses that the Lender may sustain on loans enrolled in the Program;

(d) that the Borrower's payment of its non-refundable premium charge will be collected by the Lender of transmittal to the Reserve Fund, and that other payments or transfers will be made to the Reserve Fund by the Lender and DEDA;

(e) that the Borrower is a corporation, partnership, joint venture, sole proprietorship, cooperative, or other entity, whether profit or nonprofit, which is authorized to conduct business in the State of Delaware, and the proceeds of the loan will be used for industrial, commercial, or agricultural enterprise, or any combination thereof, within the State of Delaware;

(f) that the Borrower is not an executive officer, director, or principal shareholder of the Lender, or a member of the immediate family of an executive officer, director or principal shareholder of the Lender, or a related interest of any such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" shall refer to the same relationship to the Lender, whether or not the Lender is a 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; and

(g) that the Lender has disclosed, and the Borrower has received a copy thereof, of the Notice to Borrower.

The Borrower acknowledges the foregoing and hereby represents and warrants that it has not been promised or told by anyone that it has any, legal beneficial or equitable interest in the aforementioned non-refundable premium charges or any other funds credited to the Reserved Fund, and hereby waives any right, claim or interest on all such funds paid or credited to the Reserve Fund from time to time.

\_\_\_\_\_  
Borrower

Dated: \_\_\_\_\_

EXHIBIT 3  
**NOTICE TO BORROWER**

This notice is provided to borrowers who may receive a loan from a bank under the Delaware Access Program, a program of the Delaware Economic Development Office, a State of Delaware agency, administered through The Delaware Economic Development Authority (the “DEDA”).

The purpose of this program is to assist banks to make loans that might otherwise not qualify for a bank loan. The program utilizes a special loss reserved to assist the bank in covering losses from a portfolio of loans that a bank makes under the program. The borrower pays a premium charge to the reserve, which is matched by a bank premium payment to the reserve. DEDA will then match the combined total of the Borrower’s payment and the bank’s payment.

It is important to emphasize that the loan is a private transaction between the bank and the borrower. While the program may assist a bank in being able to take more risk than normal, it is important to understand that it is still the bank that is bearing the risk of the loan. DEDA is not a party to the loan and plays no role at all in the bank’s decision regarding whether or not to make the loan. The bank’s rights and remedies are delineated in the loan contract and in law applicable to any bank financing. DEDA plays no role in any decision by the bank with respect to enforcing the bank’s rights under the loan contract.

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

EXHIBIT 4  
**SSBCI LENDER CERTIFICATION**

## Lender/Investor Certification

This Assurance is referenced by Section 3005(e)(7) and Section 3011 (c)(2) of the Small Business Jobs Act of 2010, and includes any financial institution lender that receives a loan, a loan guarantee, or other financial assistance using funds received by a Participating State under the State Small Business Credit Initiative. This certification is required by Section 3011(c)(2) of the Act from any private entity that receives a loan, a loan guarantee, or other financial assistance using funds received by a participating State under the State Small Business Credit Initiative.

Legal name of lender or investor:

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The Lender/Investor hereby certifies to the Participating State the following:

1. The loan or investment has not been made in order to place under the protection of the approved state program prior debt that is not covered under the approved state 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 any portion of SBA-guaranteed loans.
4. As required by Section 3011(c)(2) of the Small Business Jobs Act of 2010, the private entity hereby certifies to the participating State that the Principals of the private entity have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this Certification, Principal means the following: if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.
5. The insurance premium charges payable to the reserve fund by the financial institution and the borrower, together, shall not be less than two percent (2%) of the loan nor more than seven percent (7%) of the loan enrolled under the Program.

By: \_\_\_\_\_  
Lender Authorized Signer

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# LOAN FILING FORM

1. Name of Lender\_\_\_\_\_
2. Lender ID # \_\_\_\_\_
3. Date loan contract entered into \_\_\_\_\_
4. Name and Address of Borrower: \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

5. Name and Location of Business:

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

- 6. Briefly Describe the Nature of the Business:**

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7. Total Loan Amount.....\$\_\_\_\_\_

8. Amount of Loan Enrolled in Program for Coverage..... \$\_\_\_\_\_

9. Does this loan carry a guarantee from any Federal agency? ☐ Yes ☒ No

- ## 10. Loan Type

- a. Term Loan                      \_\_\_\_ Yes    \_\_\_\_ No    # of Months \_\_\_\_
- b. Line of Credit                      \_\_\_\_ Yes    \_\_\_\_ No    # of Months \_\_\_\_
- c. Other \_\_\_\_\_                      \_\_\_\_ Yes    \_\_\_\_ No    # of Months \_\_\_\_

11. NAICS Code \_\_\_\_\_

12. Industry Type Industrial Commercial Service Agricultural

13. Loan Purpose \_\_\_\_\_ Start Up \_\_\_\_\_ Working Capital \_\_\_\_\_ Refinancing \_\_\_\_\_ Building  
\_\_\_\_\_ Equipment \_\_\_\_\_ Business Ownership Purchase \_\_\_\_\_ Asset Purchase

14. Borrowers Current Number of Employees\_\_\_\_\_

15. Number of New Employees Resulting from this Project \_\_\_\_\_

16. New credit advanced in excess of refinanced amount (Only applicable to Refinancing) \$\_\_\_\_\_

17. Amount of Borrower Payment into Reserve Fund \$\_\_\_\_\_

18. Amount of Lender Payment into Reserve Fund \$\_\_\_\_\_

Total \$ \_\_\_\_\_

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**Multiplier Information**

19. Minority Owned Business (Circle if applicable)

African American

Hispanic American

Native American

Asian Americans

Alaskan

Pacific Islander

20. Woman Owned Business \_\_\_\_ (Y/N)

21. Start Up Business \_\_\_\_ (Y/N)

22. Computer related or information technology related business \_\_\_\_ (Y/N)

23. Business located and operating in a (Circle if applicable)

Delaware City

Dover

Georgetown

Harrington

Laurel

Middletown

Milford

Newark

Smyrna

Wilmington

24. Veteran Owned Business \_\_\_\_ (Y/N)

25. Disabled Owned Business \_\_\_\_ Y/(N)

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**Complete if Refinancing Loan**

26. Previous Enrolled Loan Amount.....\$ \_\_\_\_\_

27. Balance Immediately Prior to Refinancing.....\$ \_\_\_\_\_

28. New Total Covered Loan Amount.....\$ \_\_\_\_\_

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**Lender Signature**

In filing this loan for enrollment, the Lender makes the representations and warranties specified in Section 2.2 of the Agreement with regard to the obtaining of Borrower information, use of loan proceeds, receipt of Borrower pledge, and disclosure to Borrower.

Bank Authorized Signature \_\_\_\_\_

Name and Title (Printed) \_\_\_\_\_

Date \_\_\_\_\_

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**DEDA USE ONLY****Strategic Fund**

% borrower/lender payment \_\_\_\_\_

Verify borrower/lender payments received \_\_\_\_\_

Dollar amount of Borrower previously enrolled loans \_\_\_\_\_

DEDA SF Transfer \_\_\_\_\_

**SSBCI**

SSBCI Use of Funds approval (if applicable)

SSBCI Certifications submitted (if applicable)

% between 2-7%

DEDA SSBCI transfer amount \_\_\_\_\_

Signed \_\_\_\_\_

Date \_\_\_\_\_

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EXHIBIT 6  
**TRANSMITTAL FORM**

EXHIBIT 7  
**SUPPORTING LOAN DOCUMENTATION**

**EXHIBIT 8**  
**CLAIM REQUEST**

1. Name of Lender \_\_\_\_\_
2. Lender ID # \_\_\_\_\_
3. Name and Address of Borrower \_\_\_\_\_  
\_\_\_\_\_
4. Outstanding Balance of Loan (immediately prior to loan) \$ \_\_\_\_\_
5. Amount of Claim
  - a. Principal.....\$ \_\_\_\_\_
  - b. Interest.....\$ \_\_\_\_\_
  - c. Documented out of pocket expenses.....\$ \_\_\_\_\_
  - Total amount of claim.....\$ \_\_\_\_\_

Bank Authorized Signature \_\_\_\_\_  
Name and Title (Printed) \_\_\_\_\_  
Date \_\_\_\_\_

NOTE: In filing this Claim for payment, the Lender represents and warrants:

- (a) this form has been filed contemporaneously with the action to charge off the specified loan as outlined in section 5.3;
- (b) that all out-of-pocket expenses are documented and maintained in accordance with the Agreement; and
- (c) its obligation to pursue collection and recovery of loan losses as outlined in section 9.12.

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**DEDA USE ONLY**

**Internal Approval Date** \_\_\_\_\_

**Amount Approved** \_\_\_\_\_

**Staff Initials** \_\_\_\_\_