

**MONTANA STATE SMALL BUSINESS CREDIT INITIATIVE 2.0  
LOAN PARTICIPATION PROGRAM (MT SSBCI 2.0 LPP)  
LENDER LOAN SERVICING AGREEMENT**

**THIS AGREEMENT** is made and entered into as of \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, by and between \_\_\_\_\_  
(the Lender) and the Montana Department of Commerce (MDOC).

**WITNESSETH**

**WHEREAS**, the MDOC is an agency of the State of Montana; and

**WHEREAS**, the MDOC, in fulfilling its responsibility to administer the Montana State Small Business Credit Initiative 2.0 Loan Participation Program (MT SSBCI 2.0 LPP), has adopted a Policy to implement the MT SSBCI 2.0 LPP, through which the MDOC will participate with approved financial institutions and authorized CDFI/RLFs to make financing available to Montana businesses; and

**WHEREAS**, the Lender is an approved financial institution or authorized CDFI/RLF for the purposes of the MT SSBCI 2.0 LPP; and

**WHEREAS**, The Lender is a \_\_\_\_\_ duly organized and existing under the laws of \_\_\_\_\_; and with its principal office at \_\_\_\_\_  
\_\_\_\_\_ ; and

**WHEREAS**, the Lender has offered the MT SSBCI 2.0 LPP an opportunity to participate in certain loans on real property and/or security interests in tangible personal property and the MT SSBCI 2.0 LPP has evidenced an interest in acquiring a participating interest in such loans and the collateral security for said loans; and

**WHEREAS**, the Lender and the MT SSBCI 2.0 LPP agree that if the MT SSBCI 2.0 LPP decides to participate in a Loan offered by the Lender such participation shall be upon the terms and conditions set forth herein; and

**WHEREAS**, the Lender and the MDOC are both authorized to enter into this Agreement for the purpose of defining each party's rights and obligations under the MT SSBCI 2.0 LPP;

**NOW THEREFORE**, in consideration of the foregoing, the mutual covenants and conditions contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree and covenant as follows:

**Section 1.0 Definitions** The following words and terms have the following respective meanings:

- 1) "Act" means the American Rescue Plan Act of 2021 (ARPA) that reauthorized and amended the Small Business Jobs Act of 2010 (SBJA) to provide \$10 billion to fund the State Small Business Credit Initiative (SSBCI) as a response to the economic

effects of the COVID-19 pandemic. SSBCI provisions are codified at 12 U.S.C. § 5701 *et seq.*

- 2) "Borrower" means the person or entity to whom a Participation Loan is made by the Lender.
- 3) "CDFI/RLF" means the approved Community Development Financial Institutions (CDFI) and Economic Development Organizations (RLF) authorized to utilize the MT SSBCI 2.0 LPP loan funds to facilitate a participation in a Lender loan.
- 4) "Collateral" means the property, which is or at any time becomes subject to a Security Agreement.
- 5) "Commitment Letter" means that written document, originated by the MT SSBCI 2.0 LPP specifying the terms and conditions under which the MT SSBCI 2.0 LPP will participate in a specific loan with the Lender.
- 6) "Lender" means an institution issuing the loan in which the approved CDFI/RLF will facilitate the use of MT SSBCI 2.0 LPP loan funds through a participation in said loan.
- 7) "Loan Agreement" means the loan agreement between the Borrower and the Lender setting forth the terms and conditions applicable to a Participation Loan.
- 8) "Loan Documents" mean the Security Agreement, the Loan Agreement, the Note, UCC Financing Statements, ALTA Extended Mortgagee Title Insurance and other documents and instruments evidencing, securing, guaranteeing or otherwise pertaining to a Participation Loan.
- 9) "MT SSBCI 2.0 Loan Participation Program Policy" means that written document, approved by the MDOC, identifying the guidelines under which the MT SSBCI 2.0 LPP will consider issuing a Commitment Letter.
- 10) "Note" means the promissory note executed by a Borrower evidencing a Participation Loan, naming the Lender as payee and setting forth the terms of the obligation, in a form acceptable to the MT SSBCI 2.0 LPP.
- 11) "Participation Certificate" means the certificate, substantially in the form of Exhibit A hereto, executed by the Lender and accepted in writing by the MT SSBCI 2.0 LPP setting forth the amount of a Participation Loan, the Lender's and the MT SSBCI 2.0 LPP's respective shares thereof, the respective interest rates applicable thereto and the Lender's service fee.
- 12) "Participation Loan" means any loan in which a Participation Certificate has been issued by the Lender and the MT SSBCI 2.0 LPP has accepted the participation in writing, subject to conditions outlined in the Commitment Letter.
- 13) "Participation", "Participation Percentage", "Participation Interest" or words of like import mean the MT SSBCI 2.0 LPP's undivided interest in and ownership of a percentage of a Participation Loan as evidenced by the Participation Certificate issued by the Lender with respect to such Participation Loan.
- 14) "Project" means the land, building, equipment, fixtures, furnishings, and personal property or any one or more of the foregoing financed by a Participation Loan.
- 15) "Security Agreement" means an agreement granting a lien or security interest in real or personal property as security for a Participation Loan whether in the form of a mortgage, deed or trust, trust indenture, security agreement or other instrument.
- 16) "Tangible Personal Property" means all equipment, machinery and personal property that may or may not be a part of a Project.

**Section 1.1 Exhibits** Attached to and by reference made a part of the Agreement are: Exhibit A, the form of the Participation Certificate and Exhibit B, the form of the Participation Report.

**Section 1.2 Rules of Interpretation** This Agreement shall be interpreted in accordance with and governed by the laws of the State of Montana and venue therefore shall be in the First Judicial District in Lewis and Clark County.

**Section 2.0 Purpose** This Agreement shall govern the rights, interests and obligations of the Lender and the MT SSBCI 2.0 LPP with respect to all Participations purchased by the MT SSBCI 2.0 LPP from the Lender hereunder, except insofar as the terms hereof shall be modified, amplified, or amended by the terms of the Participation Certificate issued with respect to a particular Participation Loan. The Agreement shall also govern the servicing obligations of the Lender with respect to Participation Loans.

**Section 2.1 Processing of Participation Loan** The MT SSBCI 2.0 LPP shall not in any event take part in or be responsible for the negotiations with the Borrower leading to the consummation or Participation of a loan, unless requested by the Lender and in the presence of the Lender.

**Section 3.0 Submission of Information** The Lender shall provide the MT SSBCI 2.0 LPP with sufficient information to enable the MT SSBCI 2.0 LPP to determine whether the loans offered for participation conform to the policies, rules, and regulations of the MT SSBCI 2.0 LPP.

**Section 3.1 Requirement of Loan**

(1) Any loan to be participated in by the MT SSBCI 2.0 LPP shall be evidenced by a Note and a Loan Agreement (if required by the Lender or the MT SSBCI 2.0 LPP) executed by the Borrower and the Lender in the form approved by the MT SSBCI 2.0 LPP. To secure such Note, the Borrower shall execute and deliver to the Lender, and the Lender shall record appropriate Security Agreements, including but not limited to those specified hereafter in a form approved by the MT SSBCI 2.0 LPP:

- (a) If the Project includes real property or buildings, an appropriate Security Agreement granting a lien thereon and a mortgagee's title insurance policy in the current form of American Land Title Association (ALTA) Loan Policy, including mechanics' liens and (if available) zoning coverage, issued by a title company satisfactory to the MT SSBCI 2.0 LPP, insuring in the amount of such loan the Lender's interest under the Security Agreement as the holder of the mortgage lien of record on such real property, subject to only such exceptions as are acceptable to the MT SSBCI 2.0 LPP;
- (b) If the Project involves the Borrower having an interest as lessor or as lessee under one of more leases of real, personal or mixed property, an assignment of the Borrower's interest in such leases;
- (c) UCC financing statements are required to perfect a security interest in the Collateral; and
- (d) Such other appropriate instruments as required by the MT SSBCI 2.0 LPP.

(2) Any loan must contain a Due on Sale provision in the Loan Documents that all principal and interest payments due under such loan may be accelerated if the Borrower rents, sells

or otherwise transfers an interest in the property, including chattel property, or ceases to utilize any of the property for the purpose of which such loan was made.

(3) Any loan must not contain a Future Advance clause.

(4) Any loan must not contain a Cross Collateral clause associated with other Lender loans.

**Section 3.2 Commitment to Participate** Upon approval by the MT SSBCI 2.0 LPP of an application submitted in accordance with the MT SSBCI 2.0 LPP Policy, the MT SSBCI 2.0 LPP shall issue a Commitment Letter to the Lender setting forth the terms and conditions under which it will participate in a loan.

**Section 3.3 Payment and Delivery of Documents for Loan Participation** Upon receipt of a Participation Certificate executed by the Lender stating among other things that the Note and other necessary Loan Documents have been fully executed by the Borrower and recorded by the Lender, the MT SSBCI 2.0 LPP shall execute the Participation Certificate and pay to the Lender an amount equal to 100 percent of the MT SSBCI 2.0 LPP's Participation Interest as first set forth in the Commitment Letter and as shown in the Participation Certificate. The Lender shall deliver to the MT SSBCI 2.0 LPP a complete set of the Loan Documents as required by Schedule A of the Commitment Letter. The review of all loan documents or documents required under the Commitment Letter by the MT SSBCI 2.0 LPP does not constitute the concurrence by the MT SSBCI 2.0 LPP of the accuracy, validity or legality of the documents presented as required by the Commitment Letter.

**Section 3.4 Determination of Interest Rate to be Charged for Participation Loans** The interest rate charged by the Lender on a loan participated in by the MT SSBCI 2.0 LPP shall be specified in the MT SSBCI 2.0 LPP's Commitment Letter.

**Section 3.5 Interest of MT SSBCI 2.0 LPP in Participation Loan** Each Participation held by the MT SSBCI 2.0 LPP will include an interest in all amounts of principal and interest on the Participation Loan to which it relates received by the Lender in payment thereof from whatsoever source said payments are derived and in all Collateral, said interest subject to the provisions of Section 5.3 hereof, to be based upon the MT SSBCI 2.0 LPP's Participation Percentage in such Participation Loan. Each Participation in a Participation Loan held by the MT SSBCI 2.0 LPP shall be on parity with any other Participations therein and with the undivided interest therein retained by the Lender.

**Section 3.6 Assignability** The Lender shall not assign its interest in a Participation Loan or any rights with respect thereto or grant other participation interests therein without the prior written consent of the MT SSBCI 2.0 LPP. Such consent shall not be unreasonably or arbitrarily withheld. Should the MT SSBCI 2.0 LPP assign its Participation Interest, it will notify the Lender of such assignment and such notice shall include the name and address of assignee and instructions on payments to be made under this Agreement.

**Section 4.0 Warranties** The Lender represents and warrants with respect to each Participation Loan described in any Participation Certificate executed by the MT SSBCI 2.0 LPP and Lender, that:

- (1) The Lender is the sole legal, equitable and beneficial owner of each of said Participation Loans and has the right to sell and transfer a Participation Interest

therein to the MT SSBCI 2.0 LPP and has not heretofore sold or transferred or otherwise disposed of any portion of its interest without MT SSBCI 2.0 LPP concurrence in any of such Participation Loans or the Collateral therefore. If the Lender wishes to sell a portion of its retained portion of the participation loan, the Lender must get prior written approval from the MT SSBCI 2.0 LPP and retain at least five percent (5.00%) of the original loan amount.

- (2) The property subject to each Security Agreement securing a Loan is, to the best of Lender's knowledge, free and clear of all liens that are prior or superior to the lien of such Security Agreements, except: (1) the lien for future taxes and assessments not yet due and payable, and (2) subordinated liens agreed upon in the MT SSBCI 2.0 LPP's commitment.
- (3) If the property subject to the Security Agreement is subject to a superior or prior lien and the subject loan is in a secondary or subordinate security position, the MT SSBCI 2.0 LPP must give its approval to the secondary or subordinate security position.
- (4) No Loan Documents are in default and there does not exist an event which may result in default under the terms and covenants thereof. No portion of any real property subject to any Security Agreement securing a Participation Loan has been released from such Security Agreement after the date of the applicable mortgagee's title insurance policy.
- (5) All Loan Documents in connection with each Participation Loan are to the best of Lender's knowledge, valid and enforceable under existing law.
- (6) Each Participation Loan complies with all applicable provisions of the Act and Loan Policy promulgated by the MT SSBCI 2.0 LPP pursuant thereto.
- (7) The review and acceptance of all loan documents or documents required under the MT SSBCI 2.0 LPP does not constitute the concurrence by the MT SSBCI 2.0 LPP of the accuracy, validity or legality of the documents presented.

**Section 4.1 Further Warranties** Lender further represents and warrants at all times relevant herein that:

- (1) The Lender is and will be authorized to do business in the State of Montana and there are and will be no substantial or material violations on the part of the Lender of any applicable state or federal law, regulation, or rule.
- (2) Each person executing this Agreement and each Participation Certificate is or will be, at the time of execution and delivery thereof, fully authorized to do so on behalf of the Lender.
- (3) The Lender, if a financial institution, certifies that it is in compliance with the requirements of 31 C.F.R. § 1020.220, regarding customer identification programs.

**Section 5.0 Custody of and Access to Notes and Loan Documents**

(1) The Lender shall have custody and control of the Notes and the Loan Documents relating to each Participation Loan with full authority, subject to the provisions of this Agreement, to control in the name of the Lender the collection and enforcement thereof, and the utilization of the Collateral therefore, by suit, foreclosure, or otherwise. The Lender shall maintain customary records required by its supervisory authorities as to each loan in which the MT SSBCI 2.0 LPP has acquired a participation interest.

(2) The Lender agrees to make available, during ordinary business hours, to the MT SSBCI 2.0 LPP staff, Treasury, Treasury Inspector General, the Government Accountability Office, or any of their duly authorized representatives, all books and records related to the use of the MT SSBCI 2.0 LPP funds, subject to applicable privacy laws, including but not limited to 12 U.S.C. § 3401 *et seq.*, including detailed loan records, as applicable.

(3) Information included in an MT SSBCI 2.0 LPP application is subject to Montana's public records law.

### **Section 5.1 Remittance of Collections for Participation Loans**

(1) The Lender shall receive all the loan repayments on Participation Loans in trust for the benefit of the MT SSBCI 2.0 LPP without commingling and shall promptly remit to the MT SSBCI 2.0 LPP its share of all amounts so received. Except as herein provided, the MT SSBCI 2.0 LPP shall not have recourse against the Lender, either for the principal or interest on the Participation Loans, except to enforce the obligation of the Lender to remit to the MT SSBCI 2.0 LPP its share of principal and interest when, as and if collected by the Lender.

(2) Each remittance to the MT SSBCI 2.0 LPP, shall be accompanied by a Participation Report set forth in Exhibit B hereto.

(3) The Lender shall remit to the MT SSBCI 2.0 LPP its proportionate share of all principal and interest payments received by the Lender within five (5) business days of its receipt thereof. The MT SSBCI 2.0 LPP's share of interest to be remitted by the Lender shall be originally computed from the date of receipt by the Lender from the MT SSBCI 2.0 LPP of the purchase price for its Participation Interest in each Participation Loan, and interest on the Participation Loan shall thereafter be computed by Lender as provided for in the Note. Any payment received after the five (5) business days grace period may be subject to a late fee equal to the MT SSBCI 2.0 LPP's interest rate, times the late payment amount, times the number of days after the grace period, divided by the method of calculation (365 days, 360 days, or 366 days during leap year).

**Section 5.2 Sharing of Repayment Proceeds for Participation Loans** The Lender shall not acquire any preferential security, surety or insurance to protect its participation interest in a Participation Loan. All repayments, security or guarantee of any nature, including without limitation rights of off-set and counterclaim which Lender or MT SSBCI 2.0 LPP jointly or severally may at any time recover from any source whatsoever or have the right to recover on any Participation Loan, shall repay and secure the interest of the Lender and the MT SSBCI 2.0 LPP in the same proportion as such interest bears respectively to the unpaid balance of the Participation Loan. The Lender shall notify the MT SSBCI 2.0 LPP of any loan or advance by the Lender or of which the Lender has knowledge to the Borrower subsequent to a Participation Loan, and if, in the MT SSBCI 2.0 LPP's opinion, circumstances require, and the Borrower's consent, if required, is first obtained, enter into a written agreement with the MT SSBCI 2.0 LPP providing for the application of collateral or proceeds realized therefrom to the respective loans in a manner satisfactory to the parties hereto.

### **Section 5.3 Management of Participation Loans**

(1) The Lender shall have the right to manage, perform and enforce the terms of each Note and the other Loan Documents pertaining to any Participation Loan and to exercise and

enforce all privileges and rights exercisable or enforceable by it thereunder and to grant or withhold consents or approvals thereunder according to the Lender's discretion and in the exercise of its business judgement (subject to the provisions in clause (2) of this Section 5.3), provided that the Lender will not take any of the following described actions with respect to any Participation Loan without the prior written approval of the MT SSBCI 2.0 LPP:

- (a) amend or modify any terms of the relevant Note of the other Loan Documents;
  - (b) release any property subject to a Security Agreement (whether or not new collateral is substituted) which it is not obligated to release prior to payment in full of the indebtedness secured thereby or by terms of the Loan Documents;
  - (c) accelerate the maturity or grant any material extension of time for performance by the Borrower under the relevant Note or any other Loan Documents;
  - (d) make an additional voluntary advance to the Borrower under an open-end mortgage or deed of trust, secured by the same Collateral;
  - (e) waive any claim against the Borrower or any guarantor, standby creditor or other obligor of such Loan;
  - (f) release any Borrower or an guarantor, standby creditor or other obligor of such Loan;
  - (g) disburse any proceeds from fire or other insurance received as a result of fire or casualty damage or loss in excess of \$10,000 covering any Collateral or any award received as a result of any proceeding involving the condemnation of any Collateral, except as permitted by the applicable Security Agreement;
  - (h) consent to the sale, transfer, pledge or assignment of any of the Collateral or the grant of any other security interest in the Collateral by Borrower;
  - (i) subordinate the Lender's lien rights in any of the Collateral
- (2) With respect to each Participation Loan the Lender will:
- (a) exercise the same degree of care that it exercises in the servicing and administration of loans for its own account;
  - (b) service the Participated Loan in accordance with generally accepted banking practices;
  - (c) take all reasonable steps to collect promptly amounts due on each Participation Loan; and
  - (d) provide the MT SSBCI 2.0 LPP with accurate information regarding each Participation Loan

(3) All funds received from any Borrower or from any other source, or retained as part of the Participation Loan proceeds for the purpose of paying taxes, insurance premium to maintain the insurance coverage required hereby or by the Loan Documents, special assessments, or for the purpose of guaranteeing the repair or completion of improvements to the property subject to any Security Agreement shall be retained and disbursed by the Lender at such time, and from time to time, as the Lender in its discretion shall deem necessary.

(4) Each party hereto acknowledges and agrees that it will, independently and without reliance upon the other party hereto or the directors, officers, agents or employees of such other party and instead in reliance upon information furnished by each Borrower and upon such other information as it deems appropriate, make its own independent credit analysis and decision to make, in the case of the Lender, and to participate, in the case of the MT SSBCI 2.0 LPP, in each Participation Loan hereunder. Each party hereto agrees that it shall, independently and without reliance on the other party or the directors, officers, agents or employees of the other party continue to make its own independent credit analysis and decisions in taking or in refraining from taking any action under this Agreement. The MT

SSBCI 2.0 LPP, however, shall be entitled to rely on the accuracy of any and all information provided to it by the Lender regarding each Participation Loan. Each party hereto may employ agents and attorneys-in-fact and shall not be answerable, except as to money or securities received by it or its authorized agents, for the default or misconduct of any such agents or attorney-in-fact selected by it with reasonable care after appropriate investigation. Each party hereto shall be entitled to rely upon any document, paper, or instrument reasonably believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and in respect to legal matters, upon the opinion of counsel selected by it.

(5) Lender shall defend, indemnify and hold harmless the State of Montana and the CDFI/RLF hereunder and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action, liabilities, damages, judgments, expenses or fees, including the reasonable cost of defense thereof and attorney fees, arising or awarded in favor of Lender's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting in whole or in part from (i) the services performed or products provided or (ii) other acts or omissions of Lender and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State.

**Section 6.0 Duty of Lender** The Lender will promptly notify the MT SSBCI 2.0 LPP of the occurrence of any material default under any Participation Loan of which it has knowledge or has received notice. The Lender will not make any effort to exercise its remedies with respect to a default without first sending written notice to the MT SSBCI 2.0 LPP specifying the remedies which the Lender proposes to take with respect to such default. If the MT SSBCI 2.0 LPP does not give other written instructions to the Lender within 30 days after its receipt of such written proposals, the Lender may proceed with its proposed remedies.

**Section 6.1 Cost of Remedying Default** In the event of a default on any Participation Loan, the MT SSBCI 2.0 LPP shall share ratably on the basis of its Participation percentage in such Participation Loan in any expenditures necessary to maintain and preserve the position of the Lender with regard to such Participation Loan, including, without limitation, expenditures for taxes, insurance premiums, prevention of waste, repairs, maintenance and attorney's fees, to the extent not recoverable from Borrower. Prior notification, including the estimated costs, must be submitted for the MT SSBCI 2.0 LPP's approval prior to incurring any expenses related to any event of default or default proceedings, subject to the limitations contained in Section 6.0 herein. Reimbursement of such expenditures from the MT SSBCI 2.0 LPP will not be due until final liquidation of such Participation Loan, except where such liquidation takes more than 6 months, in which case the MT SSBCI 2.0 LPP will remit its pro rata share of costs to the Lender on a semiannual basis.

**Section 6.2 Foreclosure** In case of foreclosure, Lender shall protect the interest of the MT SSBCI 2.0 LPP upon a sale of the Collateral, and Lender shall be required to prosecute any claim for any deficiency judgment to the extent allowed by law for the benefit of the MT SSBCI 2.0 LPP unless otherwise instructed by the MT SSBCI 2.0 LPP. Lender shall manage and preserve the Collateral until and through final liquidation of the property. The Lender shall, after payment of all reasonable costs and expenses of foreclosure and collection, remit to the MT SSBCI 2.0 LPP its pro rata share of all net proceeds received by the Lender as a



consequence of such foreclosure proceeding, including, without limitation, the proceeds of the foreclosure sale and the income from the operation of the property pending liquidation. The Lender shall be permitted to enter a bid at a foreclosure sale for the amount due on the Participation Loan plus any fees, expenses or penalties charged by the Lender or the MT SSBCI 2.0 LPP for default. Any bid in excess of such amount shall be made only with the consent of the MT SSBCI 2.0 LPP. If Lender acquires the Collateral through foreclosure or deed in lieu of foreclosure, the MT SSBCI 2.0 LPP shall have an interest in the property equivalent to its Participation Interest in the Participation Loan and title will be in the name of Lender and the MT SSBCI 2.0 LPP.

**Section 7.0 Taxes** The Lender shall use its best effort to ensure that all taxes and assessments on the mortgaged property are promptly paid. In the event any mortgagor fails to make payment required to be made under the terms of said mortgage, Lender warrants that it will notify the MT SSBCI 2.0 LPP of such fact within sixty (60) days after the same shall have become due and payable.

**Section 7.1 Required Insurance** Unless waived in writing by the MT SSBCI 2.0 LPP in its Commitment Letter, the Lender shall require that the property subject to any Security Agreement (excluding land) is, at all times relevant herein, insured as herein specified. Such insurance shall be evidenced by an insurance policy that is:

- (1) is issued by a reputable, nationally recognized insurance company authorized to do business in the state of Montana;
- (2) is in full force and effect;
- (3) contains a loss payable clause in favor of the Lender; and
- (4) is in an amount acceptable to the MT SSBCI 2.0 LPP

The MT SSBCI 2.0 LPP may require additional coverage on specific Loans as it deems necessary which may include, but not be limited to, earthquake, flood, breach of warranty, liability and loss or rents coverage.

**Section 7.2 Insurance on Real Property** If the property subject to a Security Agreement is or includes real property, insurance coverage on such property shall include loss or damage due to fire, vandalism, and optional perils.

**Section 7.3 Insurance on Personal Property** If the Mortgaged Premises is or includes Tangible Personal Property, the insurance coverage on such property shall include fire, theft, comprehensive, collision and liability.

**Section 7.4 Errors and Omissions Insurance** Lender is not required to maintain an errors and omissions insurance policy but is requested to submit a copy of said policy to the MT SSBCI 2.0 LPP if one is maintained.

**Section 8.0 Independent Contract** The Lender shall be in the status of and act as an independent contractor and shall in no event be considered an agent or employee of the MT SSBCI 2.0 LPP. The Agreement shall not constitute nor be construed to create a partnership or joint venture between the Lender and the MT SSBCI 2.0 LPP.

**Section 8.1 Servicing Fees** As compensation for the administration of Participation Loans under this Agreement, the Lender may retain a servicing fee, not to exceed 50 basis points, from the interest collected on each Participation Loan in an amount equal to the amount by which interest paid by the Borrower on such Participation Loan exceeds the interest rate payable to the MTSSBCI 2.0 LPP as specified in the Commitment Letter and the Participation Certificate applicable to such Participation Loan. The fees authorized to be charged for change in ownership, modification of loan or late charges may also be collected and retained by the Lender for its own account. Pre-payment penalties, if any, shall be shared pro rata by the parties.

**Section 9.0 Repurchase Upon Lender's Material Breach** In the event of any material breach by the Lender of any agreement contained herein or the Loan Policy with respect to any Participation Loan not cured to the MT SSBCI 2.0 LPP's satisfaction within 30 days, the Lender shall, at the MT SSBCI 2.0 LPP's option, repurchase the MT SSBCI 2.0 LPP's Participation in such Participation Loan for the principal balance and accrued interest on the MT SSBCI 2.0 LPP's Participation therein and other monies advanced by the MT SSBCI 2.0 LPP with respect to such Participation.

**Section 10.0 Attorney's Fees** In the event either party hereto shall institute any action or proceeding against the other party hereto relating to this Agreement, the unsuccessful party in such action or proceeding shall reimburse the successful party for its reasonable attorneys' fees as fixed by the Court.

**Section 10.1 Notices** All notices which may be required herein shall be in writing and shall be considered to have been given as of the date and time when the same is deposited in a United States Post Office with postage prepaid and mailed by registered or certified United States Mail, return receipt requested, to the Lender at the following address:

Lender Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and to the MT SSBCI 2.0 LPP at the following address:

***MT SSBCI 2.0 LPP  
Montana Department of Commerce  
301 S Park Ave (59601)  
P.O. Box 200505 Helena, MT 59620-0505***

**Section 10.2 Provisions Binding** The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

**Section 10.3 Waivers, etc.** No failure on the part of the MT SSBCI 2.0 LPP to exercise and no delay in exercising, any power or right hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right. The remedies herein provided are cumulative and exclusive of any remedies provided by law.

**Section 10.4 Amendments** The MT SSBCI 2.0 LPP or the Lender may change the terms and conditions of this Agreement upon notice to the other party for future or new loans or as to existing Participation Loans with respect to the affected party's undivided interest if such changes are necessitated because of changes or amendments to the Internal Revenue Code to regulations promulgated there under or rulings interpreting the same, to Montana law, or the federal regulations applicable to the Lender. Should the MT SSBCI 2.0 LPP or the Lender desire any other amendment, the party requesting the amendment shall notify the other party thereof in writing. If the other party will not agree to the proposed amendment, the party requesting the amendment may terminate this Agreement, but this Agreement shall continue to be operative as to the Participation(s) already purchased.

**Section 10.5 Rights and Authority Irrevocable** All rights and authority given to the MT SSBCI 2.0 LPP under this Agreement are irrevocable so long as the MT SSBCI 2.0 LPP owns any Participation in any Participation Loan.

**Section 10.6 Reporting** Under the Act, the MT SSBCI 2.0 LPP is required to prepare quarterly and annual reports for the U.S. Treasury Department. The Lender agrees to provide the MT SSBCI 2.0 LPP with the information required to complete those quarterly and annual reports. The Lender also agrees to provide any additional information the MT SSBCI 2.0 LPP deems necessary relating to the MT SSBCI 2.0 LPP funded participations.

**IN WITNESS WHEREOF**, the Lender and the MDOC have caused this agreement to be duly executed on the date first above written.

Lender

---

Name, Title

Date

Montana Department of Commerce

---

Adam Schafer, Deputy Director

Date

**Exhibit A**  
**LOAN PARTICIPATION CERTIFICATE**

MT SSBCI 2.0 LPP Loan Number:

This certificate is issued by the undersigned institution (Approved Lender) to the **CDFI/RLF** for the loan to be participated in by the **CDFI/RLF** in accordance with its Commitment Letter dated \_\_\_\_\_ (Commitment Letter). It represents the original stated interest in the following loan:

Borrower: \_\_\_\_\_ Outstanding Principal Balance: \$ \_\_\_\_\_

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

Date of Note: \_\_\_\_\_ Effective Interest Rate to Borrower: \_\_\_\_\_%

Approved Lender's Share: Amount \$ \_\_\_\_\_ Interest Rate: lender share%

Percentage of Total: lender% of participation%

CDFI/RLF's Share: Amount \$ \_\_\_\_\_ Interest Rate: CDFI/RLF rate w/fee%

Percentage of Total: CDFI/RLF % of participation %

**CDFI/RLF's Net Yield: CDFI/RLF \_\_ rate% + Approved Lender's Service Fee: service fee%**

With regard to this loan, the Approved Lender certifies as follows:

- 1) That all Loan Documents described in the Commitment Letter have been executed by the Borrower and Approved Lender and conform to the Commitment Letter;
- 2) That all Security Documents described in the Commitment Letter have been filed and recorded by the Borrower or the Approved Lender with the appropriate county and state officials; and
- 3) That the loan has been fully disbursed or, in the case of a Participation Loan, will be fully disbursed upon receipt of the **CDFI/RLF's** share.

The Approved Lender and **CDFI/RLF**, by acceptance hereof, agree to the following:

- 1) This certificate is effective as of its date and is issued subject to the provisions hereinafter contained.
- 2) The Approved Lender will diligently service the loan in accordance with the Approved Lender Commercial Servicing Agreement of the Montana Board of Investments (Board) between the Approved Lender and the Board.
- 3) The **CDFI/RLF's** participation interest in the loan is transferable.

Dated: \_\_\_\_\_, \_\_\_\_\_.

Approved Lender: **Approved Lender/city**

ATTEST:

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

ACCEPTED:

**CDFI/RLF**

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

Administrative Officer

**Exhibit B**

Please fill in all blanks to ensure proper reconciliation.

**CDFI/RLF PARTICIPATION REPORT**

ON LOANS SERVICED BY APPROVED FINANCIAL INSTITUTIONS

PURSUANT TO THE TERMS OF PARTICIPATION AGREEMENT UNDER WHICH THIS LOAN WAS MADE

**FAX TO: CDFI/RLF**

CDFI/RLF fax number

**CDFI/RLF PARTICIPATION UNDER THE:**

Montana State Small Business Credit Initiative 2.0 Loan Participation Program

**1. COMPLETE ON EACH REPORT:**

Amount of Note: \$ \_\_\_\_\_

Date of Note: \_\_\_\_\_

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

Interest is calculated on:

\_\_\_\_30/360\_\_\_\_Actual days/365\_\_\_\_Other (explain below)

**Next payment date:** \_\_\_\_\_

**Total required payment amount:** \$ \_\_\_\_\_

MT SSBCI 2.0 LPP LOAN NUMBER: **loan #**

BORROWER (Name): **borrower**

Lender (Name and Address):  
**Approved Lender name & address**

Repayment\*

2. Repayment received \_\_\_\_\_, \_\_\_\_\_ on installment due \_\_\_\_\_, \_\_\_\_\_ in the amount of ..... \$ \_\_\_\_\_

3. Interest period: From \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_. Number of days ..... # \_\_\_\_\_

4. **CDFI/RLF's** share of interest (**CDFI/RLF rate**) % rate on 50% of gross principal balance) ..... \$ \_\_\_\_\_

5. LENDER's share of interest:

a) LENDER's rate (**lender's share**% rate on 50% of gross principal balance) ..... \$ \_\_\_\_\_

b) LENDER's **service fee**% service fee on 50% of CDFI/RLF's share of gross principal balance..... \$ \_\_\_\_\_

TOTAL LENDER's share (a + b)..... \$ \_\_\_\_\_

6. Total interest (Item 4 + Item 5) ..... \$ \_\_\_\_\_

7. Total principal (Item 2 - Item 6)..... \$ \_\_\_\_\_

8. **CDFI/RLF's** share of principal: (50% of Item 7) ..... \$ \_\_\_\_\_

9. LENDER's share of principal: (50% of Item 7)..... \$ \_\_\_\_\_

10. **PAYMENT DUE TO CDFI/RLF\*\*:** (Item 4 + Item 8) ..... \$ \_\_\_\_\_

**Balance of Loan Account**

**Gross**

**CDFI/RLF's Share**

**LENDER's Share**

11. Principal balance from previous report .....

12. Less principal repayment, if any, reported above.....

13. Current outstanding loan balance .....

**DEFAULTS (if any) AND COMMENTS:**

Authorized Signature\*\*:

Name/title (Please print or type)

Phone No.:

Fax No.:

Date of Report:

\*In the event the borrower's remittance includes amounts for taxes, etc., only that portion of the remittance applicable to principal and interest should be reported. \*\* Authorization to initiate ACH transfer of Payment Due to CDFI/RLF in the amount indicated above.

