

**WISCONSIN  
BUSINESS DEVELOPMENT**

**OPPORTUNITY FUND LLC**

**CAPITAL ACCESS PROGRAM**

**Lender Participation Agreement**

THIS AGREEMENT made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between WBD Opportunity Fund, LLC ("FUND"), a limited liability company in the State of Wisconsin, whose address is 100 River Place, Suite One, Monona, Wisconsin, 53701, and \_\_\_\_\_, a \_\_\_\_\_ whose address is \_\_\_\_\_ (the "Lender").

RECITALS

WHEREAS, the Program as defined below is an initiative of WBD Opportunity Fund, LLC, a Certified Community Development Financial Institution ("CDFI") affiliate of Wisconsin Business Development Finance Corporation, to assist in providing cash reserve funds for lenders to use as additional collateral for commercial or other business enterprise lending that might not meet conventional lending requirements; and

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

WHEREAS, the FUND has determined that providing assistance in establishing loan loss reserves will promote and serve the intended purposes of the FUND; and

WHEREAS, the FUND and the Lender desire to set forth the terms and conditions of the loan loss reserve funds that will apply if the Lender decides to make loans under the Program (as described herein).

NOW, THEREFORE, the parties agree as follows:

ARTICLE I  
DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, each of the following words and terms as used in this Agreement shall have the following meaning, unless the context

indicates another meaning or intent, and such definition shall be equally applicable to both the singular and plural forms of the terms as content may require:

“Act” means Section 20.143(1)(c) of the Wisconsin Statutes, as initially enacted as 2009 Wisconsin Act 268.

“Administrator” means the FUND and any entity under contract with the FUND to administer all or any portion of the Program. See also Section 9.13, below.

“Affiliate”, when describing a relationship with the Lender means any one or more bank subsidiaries (other than the Lender) of the Lender’s parent corporation and its successors.

“Bank” means either: (a) a financial institution regulated by the State of Wisconsin or the United States that is in good standing with applicable regulatory authorities, or (b) an entity that has an existing portfolio of revolving loans to small businesses and has as its primary purpose and mission the promotion of community development primarily in a limited geographic area of Wisconsin that is experiencing economic distress.

“Borrower” means the recipient of a loan which is, has been, or will be filed by the Lender for enrollment under the Program. The borrowers must be provided the Notice (Exhibit 3) and complete the Borrower Representation Form (Exhibit 2), as such Exhibits may be modified from time to time by the Fund.

“Claim” means any claim filed by the Lender pursuant to Section 5.3 using the Claim Form (Exhibit 4).

“Eligible Loan” means a loan made by the Lender to a Borrower for which (a) the representation and warranties as set forth in Section 2.2 are true and correct (and for which a completed Exhibit 2 has been delivered to the FUND); and (b) if the loan is in the principal amount of \$500,000 or more, prior written approval for enrollment in the Program has been granted by the FUND.

“Enrolled Loan” means a loan enrolled by the Administrator pursuant to the terms of Article IV hereof utilizing the Enrollment Form (Exhibit 1) as modified from time to time by the Fund.

“Participating Bank” means any Bank which participates in the Program (as defined under the Act), including without limitation Lender.

“Passive Real Estate Investment” means ownership of real estate for the purpose of deriving income from speculation, trade or rental, except that such term shall not include the ownership of that portion of real estate which is being used or intended to be used solely for the operation of the business of the owner of the real estate.

“Program” means the Capital Access Program established by the FUND.

“Reserve Fund” means an administrative account established and maintained with Lender by Administrator to hold and account for funds accumulated pursuant to this Agreement to cover losses sustained by the Lender on Enrolled Loans, as more specifically set forth in Article III.

## ARTICLE II REPRESENTATIONS

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

(a) The FUND is a non-profit corporation organized and in good standing under the laws of the State of Wisconsin.

(b) The FUND has duly taken all action on its part required to authorize, execute and deliver this Agreement. This Agreement when executed will be valid, binding and enforceable in accordance with its terms.

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 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, cooperative, or other entity, whether profit or non-profit, which is authorized to conduct business in the State of Wisconsin, and the proceeds of the loan will be used for industrial, commercial or other business enterprise, or any combination thereof, within the State of Wisconsin.

(ii) The proceeds of the loan will not be used for an endeavor any portion of which will consist of or be devoted to the sale of alcoholic beverages (as defined under the Act).

(iii) The proceeds of the loan will not be used for to the construction or purchase of residential housing.

(iv) The proceeds of the loan will not be used for Passive Real Estate Investment.

(v) The Borrower is not an executive officer, director or principal shareholder of a Participating Bank, or a member of the immediate family of an executive officer, director

or principal shareholder of a Participating Bank, or a related interest of any such executive officer, director or 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 a Participating Bank, whether or not the Participating Bank is a member bank, as the relationship specified for those terms in connection with member banks in Part 215 of Title 12 of the Code of Federal Regulations, including amendments of such Part 215 which may be made from time to time.

(vi) Neither the Borrower nor any officer, director, shareholder or owner of the Borrower, nor any spouse, parent, child, brother or sister of any of the foregoing, is an officer, director, official or employee of the FUND.

(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 in the form as set forth in Exhibit 2, or such modified exhibit as may be specified by the FUND, stating 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 owned 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 as set forth on Exhibit 3 hereto, or such modified exhibit as may be specified by the FUND.

(iv) That the Lender has complied or will comply with all federal and state laws, rules and regulations pertaining to the making of the loan.

(v) That the Lender is a Bank (as defined in Article I herein).

(vi) That the loan to Borrower is for a project for which financing might not be otherwise available due to Borrower's lack of adequate collateral, net worth, or credit history.

### ARTICLE III ESTABLISHMENT OF THE RESERVE FUND

Upon the execution of this Agreement, the FUND shall establish, at the Lender, an administrative account in the name of the FUND for the purpose of receiving all required fee charges to be paid by

the Lender and the Borrower, and transfers made by the FUND, pursuant to the terms of Section 5.1 hereof. The account shall be a money market deposit account, time deposit open account or other type of interest-bearing account acceptable to the FUND called the CAP Loan Loss Reserve Fund - \_\_\_\_\_ (Name of Lender) \_\_\_\_\_ (the "Reserve Fund") and shall earn interest at a rate per annum equal to the Lender's published rate of interest for accounts of the same type.

#### ARTICLE IV ENROLLMENT OF LOANS IN PROGRAM

Section 4.1. Loans. A Loan to be filed for enrollment under this Agreement may be made with such interest rate, fees, and other terms and conditions as the Lender and Borrower may agree. The loan may be in the form of a line of credit, in which case the amount of the loan shall be considered to be the maximum amount that can be drawn down against the line of credit.

Section 4.2. Enrollment.

(a) In order to enroll a loan under the Program, the Lender shall file the loan for enrollment by causing to be delivered to the FUND the following:

(i) A copy of Exhibit 1 and Exhibit 2 in completed form, or such modified exhibit as may be specified by the FUND, bearing an execution signature of an authorized officer of the Lender.

(ii) Transmittal of the non-refundable fees payable as set forth in Section 5.1 in connection with the loan by the Lender and the Borrower, or evidence that such transmittal has occurred, in accordance with procedures specified by the FUND.

(iii) Evidence that Lender has delivered to the Borrower the Notice in form set forth in Exhibit 3.

(b) The Lender shall file the loan for enrollment with Administrator, in form and substance as required by Administrator within ten (10) business 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. For the purposes of this Agreement, the filing of a loan for enrollment shall be deemed to occur on the date on which the Lender delivers to the FUND, delivers to a professional courier service for delivery to the FUND, or mails to the FUND, the documentation required by this Section.

(c) If the Lender seeks to file for enrollment in the Program any loan in the principal amount of \$500,000 or more, the Lender shall obtain the written approval of Administrator before funding any portion of the loan.

(d) A loan which Lender files for enrollment shall become an Enrolled Loan upon and only upon the written approval of Administrator, which may be granted or withheld in Administrator's sole discretion. Without such approval of Administrator, the loan will not be enrolled under the Program, and the FUND shall not transfer funds for such loan into the Reserve Fund. Administrator shall use its reasonable efforts to process requests for loan enrollment promptly.

Section 4.3. Acknowledgement. Upon receipt by the FUND of the documentation identified in Section 4.2 hereof, the FUND 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 deliver to the Lender, within five (5) business days of such receipt, an acknowledgement of enrollment, bearing the execution signature of an authorized representative of the FUND, accompanied by the FUND's payment into the Reserve Fund pursuant to Section 5.1.

Section 4.4. Portions of Loans. When filing a loan for enrollment, the Lender may specify an amount to be covered under the Program that is less than the total amount of the loan. Unless the context clearly requires otherwise, when used in this Agreement in connection with a loan or loans, the words "amount" and "proceeds" shall refer only to the amount covered under this Agreement.

Section 4.5. Refinancing of Prior Loans. If the Lender makes a loan to a Borrower which loan is a refinancing of a loan previously made to the Borrower by the Lender or an Affiliate of 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, with the amount of the loan to be covered under the Program not exceeding the amount of additional or new financing.

Section 4.6. Refinancing of Enrolled Loan; No Increase in Amount. 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 the FUND into the Reserve Fund.

Section 4.7. Refinancing of Enrolled Loan; Increase in Amount. 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, (a) 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 and (ii) the Lender shall, at the time of such refinancing, make and/or be deemed to have made with respect to such refinanced loan the representations and warranties of the Lender set forth in Section 2.2(a) and 2.2(b) of this Agreement.

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

Section 4.9. Zero Balances. If the outstanding balance of an Enrolled Loan which is not a line of credit is reduced to zero, such loan shall no longer be considered an Enrolled Loan. If an Enrolled Loan which is a line of credit has an outstanding balance of zero for a twelve (12) month period, such line of credit shall no longer be considered an Enrolled Loan, unless before the expiration of the twelve (12) month period (a) the Lender has reaffirmed in writing to the Borrower that the line of credit will remain open, (b) the Borrower has acknowledged and accepted in writing such reaffirmation, and (c) the Administrator has in its sole discretion approved in writing such reaffirmation.

Section 4.10. FUND Allocation. The FUND may from time to time notify Lender of the amount of funds available for contribution to the Reserve Account in connection with enrollment of loans in the Program by Lender. Loans shall not be filed for enrollment or enrolled if the amount of the FUND's payment to the Reserve Fund in connection with the loan would exceed amounts available as specified in such notice.

## ARTICLE V USE OF THE RESERVE FUND

Section 5.1. Payments and Transfers to the Reserve Fund.

(a) The fees payable to the Reserve Fund by the Lender and the Borrower in connection with a loan being filed for enrollment with the FUND pursuant to Section 4.2 shall be prescribed by the Lender; provided, however, that the amount paid by the Borrower shall not be less than 1.5% of the amount of the loan, and shall not be greater than 3.5% of the amount of the loan. The amount paid by the Lender shall be equal to the amount paid by the Borrower. The Lender may recover from the Borrower the cost of the Lender's payment in any manner in which the Lender and Borrower agree. When enrolling a loan under Article IV, the FUND shall transfer into the Reserve Fund, from available funds that have been allocated by the Board of Directors of the FUND to the Capital Access Program, an amount equal to the combined amounts paid into the Reserve Fund by the Borrower and the Lender for each Enrolled Loan.

(b) The FUND shall deposit into the Reserve Fund in each case an amount determined by the FUND of not less than 100% nor greater than 150% of the combined amounts paid into the Reserve Fund by the Borrower and the Lender for each Enrolled Loan, which may, as determined by the FUND in its discretion, include funds from the capital access program administered by Milwaukee Economic Development Corporation (MEDC).

(c) The maximum amount to be transferred into the Reserve Fund by the FUND 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 \$150,000 unless pursuant to a written request by the Lender the FUND approves, in writing, the transfer of an amount in excess of \$150,000. 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.

(a) All funds credited to the Reserve Fund shall be the exclusive property of and solely controlled by the FUND. The FUND may not withdraw funds from the Reserve Fund except as is specifically provided for in this Agreement.

(b) Interest or income earned on the funds credited to the Reserve Fund shall be deemed to be part of the Reserve Fund. However, the FUND is authorized to withdraw at any time from the Reserve Fund fifty percent (50%) of all interest or income that has been credited to the Reserve Fund, and such interest and income may be used to promote the Program and pay the Administrator. None of such amounts withdrawn shall ever be required to be transferred back to the Reserve Fund.

#### Section 5.3. Claims by Lender to Reserve Fund.

(a) If the Lender, in a manner consistent with the Lender's usual method for making such determinations on business loans which are not Enrolled Loans, charges off all or part of an Enrolled Loan, the Lender may file a Claim with the FUND by submitting a completed claim form in the form attached hereto as Exhibit 4, or such modified exhibit as may be specified by the FUND, bearing the execution signature of an authorized officer of the Lender, and a copy of the Lender's charge-off memorandum. Any Claim that is filed hereunder may be filed contemporaneously with the action of the Lender to charge off all or part of the loan. Lender shall provide to the FUND upon request information and documents to support its claim.

(b) Lender's Claim may include, in addition to the amount of principal charged off plus accrued interest, an amount which represents its reasonable and verifiable out-of-pocket expenses incurred in pursuing its collection efforts, including preservation of collateral. The Lender shall retain documentation in its files evidencing all expenses for which a Claim is filed. The amount of the Claim shall not exceed the lesser of (i) one hundred percent (100%) of the principal amount of the loan covered under the Program upon enrollment, plus accrued unwithdrawn interest attributable to such covered principal amount or (ii) the amount of funds then in the Reserve Fund.

(c) The Lender, in a manner consistent with its normal method for making such determinations on business loans which are not Enrolled Loans, shall determine when and how much to charge off an Enrolled Loan.

(d) 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 of priority in which the FUND shall pay such Claims in accordance with Section 5.4

(e) In respect to any loan less than the total amount of which is an Enrolled Loan, Lender's Claim against the Reserve Fund shall be prorated in accordance with the fraction of the loan which was enrolled.

#### Section 5.4. Disbursement of Reserve Fund.

(a) Notwithstanding the violation of any other provision of Agreement by the Lender, upon receipt by the FUND of a Claim filed by the Lender in accordance with Section 5.3, the FUND shall promptly pay, from funds in the Reserve Fund such Claim as submitted, except that the FUND 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 or were provided by the Lender recklessly without regard to the truth or falsehood thereof.

(b) If there are insufficient funds in the Reserve Fund to cover the entire amount of the Lender's Claim, the FUND 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.

(a) Lender shall continue to pursue collection efforts with reasonable diligence subsequent to payment of a claim by the FUND to the extent Lender deems reasonable and appropriate. Lender shall exercise its judgment with respect to the nature and extent of such collection efforts in accordance with Lenders normal policies and practices as if the Loan was not an Enrolled Loan under the Program. Upon the request of the FUND, copies of any reports or reviews prepared by Lender with respect to Enrolled Loans as to which a claim has been paid out of the Reserve Fund shall be furnished promptly to the FUND. If subsequent to payment of a Claim by the FUND the Lender shall recover from a Borrower any amount for which payment of the Claim was made, the Lender shall promptly pay to the FUND for deposit in the Reserve Fund such amount recovered, less any out-of-pocket expenses incurred. The Lender shall retain documentation in its files evidencing such expenses. The Lender shall only be required to pay to the FUND, 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.

(b) For the purposes of this Section and Section 5.6, the Lender's loss on an Enrolled Loan shall include any losses on the loan in an amount equal to one hundred percent (100%) of the sum of the outstanding principal balance plus accrued interest plus reasonable, documented out-of-pocket collection expenses.

Section 5.6. Subrogation. If there is payment of a Claim pursuant to Section 5.4, the FUND shall be subrogated to the rights of the Lender with respect to such loan and any and all 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 the FUND any right, title or interest to any collateral, security, guarantees, or other right of recovery in connection with the loan. If such assignment has been made, the FUND shall not be required to undertake any obligations of the Lender pursuant to its loan documents, except for any obligations directly related to the exercise by the FUND 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 the FUND and Administrator with all reasonable assistance thereafter as the FUND or Administrator 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 out-of-pocket expenses. Any fund received by the FUND as a result of enforcement actions taken with respect to any such collateral, security or other right of recovery shall be promptly deposited by the FUND in the Reserve Fund, less any out-of-pocket expenses incurred by the FUND in taking such enforcement actions.

Section 5.7. FUND Reports. From time to time but no less frequently than annually, the FUND shall submit a report to the Lender indicating the aggregate amount of funds available under the Program. If at any time such report indicates that the aggregate amount of available funds is less than \$100,000.00, then during the period of time until the next report, the Lender may, but shall not be required to, contact the FUND for confirmation of the aggregate amount of then available funds under the Program.

## ARTICLE VI WITHDRAWAL OF EXCESS RESERVE FUNDS

Section 6.1. Lender Reports and the FUND Right of Withdrawal. On or before January 31 of each year, the Lender shall file a report with the FUND indicating the name of the Borrower, the outstanding balance, the available unused portion of the loan if it is a line of credit, and the status (current and delinquent) of each Enrolled Loan as of the previous December 31. If reports filed pursuant to this Section indicate that for the immediately preceding twenty-four(24) month period the balance in the Reserve Fund continually exceeded the aggregate outstanding balance of all Enrolled Loans, the FUND may withdraw from the Reserve Fund, on or before the last day of the month in which a report is due, an amount not greater than the amount by which the Reserve Fund balance exceeded the aggregate outstanding balance of all Enrolled Loans plus unfunded portions of Enrolled Loans that are lines of credit, as of the most recent report, unless the Lender has provided to the FUND adequate documentation that at some time during such twenty-four (24) month period, the aggregate outstanding balance of all Enrolled Loans exceeded the balance then in the Reserve Fund. Any amount withdrawn from the Reserve Fund by the FUND (other than interest permitted to be withdrawn and utilized pursuant to Section 4.2(b), above) shall remain restricted pursuant to the Program.

Section 6.2. Withdrawals After Report Dates.

(a) If the FUND is entitled to withdraw funds from the Reserve Fund pursuant to Section 6.1, but the Lender's report pursuant to Section 6.1, which report in combination with prior consecutive reports demonstrates the FUND's right to withdraw, is not timely filed with the FUND, the FUND shall have fifteen (15) days from its actual receipt of such report to withdraw such funds.

(b) If such report is not filed within thirty (30) days of its original due date, the FUND shall be entitled to withdraw from the Reserve Fund, based on the FUND's determination from an inspection of the Lender's files pursuant to Section 9.3, an amount not greater than the amount by which the Reserve Fund balance exceeded the aggregate outstanding balance of all Enrolled Loans as of the date for which such report was required to be filed.

Section 6.3. Reserve Fund Statements. The Lender shall provide to the FUND, not less frequently than quarterly, statements showing balances, interest earned and other activity affecting the Reserve Fund.

## ARTICLE VII TERMINATION

Section 7.1. Enrollments. The FUND may, in its sole discretion, terminate (a) its obligation under this Agreement to match Lender/Borrower fees payable to the Reserve Fund, and/or (b) Lender's right to enroll new loans in the Program. Such termination shall be effective on the effective date specified in the written notice of termination, except that such termination shall not apply to any loan which is made on or before the date on which the notice of termination is received by the Lender. Any terminations under this Section shall be prospective only, and shall not apply to any loans previously enrolled under the Program.

Section 7.2. Administrator Termination. The FUND or Administrator or both may, in it or their sole discretion, by delivery of written notice ("Termination Notice") to the Lender, terminate all of its obligations and duties under this Agreement (including without limitation maintenance and management of the Reserve Fund) if for a period of 12 consecutive months the Lender has no Enrolled Loans. Such termination shall be effective as of the date specified in the Termination Notice. Upon termination pursuant to this Section 7.2, all monies held in the Reserve Fund shall automatically be the property of Administrator and Administrator shall be entitled to withdraw at such times and in such amounts, as Administrator determines in its sole discretion, the monies held in the Reserve Fund.

## ARTICLE VIII PLEDGE OF THE RESERVE FUND

The FUND hereby pledges the funds in the Reserve Fund to be available to pay Claims pursuant to Section 5.4. The FUND further pledges that the Lender shall have a first security interest in the funds in the Reserve Fund to pay Claims pursuant to Section 5.4, and the FUND will not encumber or pledge the funds to any other party. Nothing contained herein is intended to diminish the ownership or control of the Reserve Fund granted to the FUND in Section 5.2, and further nothing

contained herein shall affect the rights of the FUND to withdraw funds from the Reserve Fund pursuant to Section 6.1 and Section 6.2

## ARTICLE IX MISCELLANEOUS

Section 9.1. Amendments to Agreement. The FUND may, with at least forty-five (45) days written notice to the Lender, amend in writing any provision of this Agreement. However, in the absence of the consent of the Lender, no such amendment shall be applicable to loans made prior to the effective date of the amendment, 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 9.2. Information to the FUND. The Lender shall from time to time, at the request or direction of Administrator, provide the FUND and/or Administrator with such information regarding Lender's participation in the Program as the FUND may request, which at a minimum shall include a list of each of the outstanding Enrolled Loans and their outstanding balances. The FUND agrees that it will treat as strictly confidential any information furnished by Lender concerning Borrowers or Enrolled Loans except as may be otherwise required by law. Administrator and the FUND may upon notice to Lender inspect Lender's records and files respecting any Enrolled Loan and any loan which is or was an Enrolled Loan and charged off in whole or in part.

Section 9.3. Inspection of Files. Upon notice to the Lender, the FUND may inspect the files of the Lender relating to any loans enrolled under the Program, during normal business hours of the Lender. The FUND agrees that it will not copy or extract any information from such files unless, if such information cannot be protected, the consent of the Borrower has been obtained. In addition, in the absence of the consent of the Borrower to do otherwise, the FUND shall maintain the confidentiality of information obtained from such files, irrespective of whether such information has been copied or extracted. Notwithstanding the foregoing, this Section is not intended to limit or preclude the ability of the FUND 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 the FUND by the Lender or any Borrower.

Section 9.4. Compliance with Applicable Law. The Lender shall comply with all applicable federal and state laws, rules and regulations in relation to its activities hereunder.

Section 9.5. Limitation of Rights. This Agreement shall be for the exclusive benefit of the Lender and the FUND, and shall not be construed to give any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement.

Section 9.6. Severability. If any clause, provision or section of this Amendment 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 9.7. Notices. All notices, certificates, request 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:

- (a) If to the FUND by mail, messenger or professional courier service  
WBD Opportunity Fund, LLC  
100 River Place, Suite 1, Monona, WI 53716  
Or – P. O. Box 2717, Madison, WI 53701
- (b) If to Lender:

Bank Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Attention: \_\_\_\_\_

Such addresses may be changed by means of written notice as aforesaid.

Section 9.8. Binding Effect; Assignment. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that any attempted assignment of rights under this Agreement by Lender shall be void and of no effect unless the Lender shall have obtained the prior written consent of the FUND, which consent shall not be unreasonably withheld. The FUND shall have the right to assign agreement upon written notice to Lender.

Section 9.9. Reports of Regulatory Agencies. The Lender hereby consents to the transmittal to the FUND, by any financial institutions regulatory agency of the federal or state governments, of any information directly relating to the Lender's participation in the Program. The FUND shall hold any information acquired pursuant to this Section strictly confidential except as may be otherwise required by law.

Section 9.10. No Personal Liability. No member, officer or employee of the FUND or the 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. The FUND shall not be liable to Lender under any circumstances whatsoever for any loss incurred by the Lender except to the extent of amounts in, or which should have been deposited by the FUND in, the Reserve Fund.

Section 9.11. Collateral. Except upon the exercise of the FUND's right of subrogation as set forth in Section 5.6, the FUND 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 the FUND's consent is not necessary for an amendment to 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 9.12. Collection of Loans. Within the context of the objectives of the Program, the Lender agrees to exercise reasonable and diligence in the making and collection of loans under the Program.

Section 9.13. Appointment of Administrator. The FUND may itself serve as, and may appoint and contract with such parties as it selects, including without limitation affiliates of the FUND, to serve as, the Administrator of the Program. Such Administrator may be appointed, removed and replaced in the sole discretion of the FUND. Initially, the Administrator shall be the FUND.

Section 9.13. Captions. The captions in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 9.14. Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Wisconsin.

**FUND: WBD Opportunity Fund, LLC**

**LENDER:** \_\_\_\_\_

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

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

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

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