

**DRAFT MICHIGAN SAVES  
LOAN LOSS RESERVE FUND AGREEMENT**

This Michigan SAVES Loan Loss Reserve Fund Agreement (this "Agreement") is effective as of \_\_\_\_\_, 2010, between MICHIGAN SAVES, INC., a Michigan nonprofit corporation ("Michigan SAVES"), and ShoreBank Enterprise Detroit, a community development financial institution ("Lender") (hereinafter, collectively the "Parties").

**WHEREAS**, Michigan SAVES and the Lender are entering into this Agreement regarding the Michigan SAVES Loan Program (the "Program") to provide a loan loss reserve for certain types of energy efficiency loans ("Program Loans") to be made by Lender to certain eligible borrowers;

**WHEREAS**, contemporaneously with the signing of this Agreement, Michigan SAVES has provided Lender with a copy of the Michigan SAVES Pilot Program: Requirements for ShoreBank Enterprise Detroit (as may be amended from time to time, the "Requirements");

**WHEREAS**, Michigan SAVES desires to provide a loan loss reserve fund in connection with Program Loans made by Lender; and

**WHEREAS**, the parties desire to set forth in this Agreement the terms and conditions of the Reserve Fund.

**NOW, THEREFORE**, the parties agree as follows:

**1. Term of Agreement.**

1.1 Lending Period. Program Loans may be made during the period (the "Lending Period") beginning as of the date of this Agreement and ending on the earlier of (a) the date on which Michigan SAVES has contributed the Maximum Total Net Contribution (as defined in Section 3.5) to the Lender's Reserve Fund Balance (defined in Section 3.1) or (b) six months following the effective date of this Agreement or such later date as the parties may mutually agree to in writing.

1.2 Term of this Agreement. This Agreement shall continue in effect until the earlier of (i) the date by which each Program Loan made by the Lender during the Lending Period has been either repaid in full by the borrower or Lender has recovered its Eligible Losses (as defined in Section 5.1) with respect to such Program Loan pursuant to this Agreement, or (ii) the date the Lender's Reserve Fund Balance has been paid to Lender in accordance with Section 4.2.

## **2. Program Loans.**

2.1 Requirements. Only Program Loans meeting the criteria specified in the Requirements are eligible for recovery from the Reserve Fund. Lender has received and agrees to comply with the Requirements and follow the Program procedures described in the Requirements. Michigan SAVES may modify the Requirements and its contents from time to time by modifying the Requirements on the Michigan SAVES website, provided that Michigan SAVES gives notice prior to making the change, via email or US Mail to the Lender's contact person for purposes of the Program. Any Program Loans shall be originated by Lender in conformity with the Requirements.

2.2 Promotion of Program Loans. Lender will use reasonable efforts to educate appropriate staff concerning Program Loans. Based on the Initial Loan Loss Reserve Amount (as defined in Section 3.1) of \$160,000, the parties anticipate that Lender will be able to make at least \$320,000 of Program Loans for which the \$160,000 would represent a fifty percent (50%) reserve fund on the terms of this Agreement.

### 2.3 Underwriting and Loan Administration.

(a) Underwriting. Program Loans must satisfy the minimum underwriting criteria specified in the Requirements. Lender has sole responsibility for underwriting decisions and legal compliance with respect to the Program Loans it makes. Lender agrees that for each Program Loan it makes it will investigate and evaluate the creditworthiness of the applicant in a manner consistent with its customary practice for a business loan in the amount proposed without the benefit of a loss reserve.

(b) Loan Administration. The Lender will receive all loan payments and will service each Program Loan until it is paid in full. The Lender will follow its normal collection procedures with respect to any delinquent Program Loan. Lender shall maintain such records with respect to the Program Loans as it customarily maintains with respect to other loans it makes of a similar nature.

(c) Consent to Information Sharing. Lender shall require each borrower under a Program Loan to sign a consent form provided by Michigan SAVES that allows Lender to share information about the account with Michigan SAVES.

### 2.4 Monthly Reporting of New Program Loans and Portfolio Status.

(a) Monthly Report. Within ten business days after the end of each month, Lender shall provide to Michigan SAVES an itemized report on a form provided by Michigan SAVES (the "Monthly Loan Report"). The Monthly Loan Report will include:

(1) New Program Loans. An itemized report of new Program Loans made during that month, including the loan number, the origination date, the name of the borrower(s), amount of loan, interest rate, amount of monthly payments and term;

(2) Confirmation of Eligibility. A certification by Lender that to the Lender's knowledge the new Program Loans are eligible loans under the criteria included in the Requirements related to Lender's responsibilities;

(3) Portfolio Status and Amortization Report. A status report for all outstanding Program Loans, including the loan number, the origination date, the borrower name(s), original balance, current balance, loan term and interest rate, payments received and information about any delinquent payments; and a report on the amortization of all outstanding Program Loans through the end of that month reporting the total principal repayment for all Lender's Program Loans during that month (the "Aggregate Amortization Amount"). The Aggregate Amortization Amount represents the amount of principal that has been repaid during that month.

(b) Review and Confirmation. Michigan SAVES shall have the right to review and confirm the existence of and documentation for any Program Loan included in a Monthly Loan Report.

(c) Confidentiality. Michigan Saves will use information provided in each Monthly Loan Report and other information provided by Lender for program management and evaluation purposes only, and will require all staff, affiliates, agents, and designees to treat the information as confidential unless otherwise required by law. For all other uses, Michigan Saves will only release information in an anonymous and aggregated form – that is, by removing all personally identifying information.

### **3. The Reserve Fund.**

3.1 Reserve Fund. Michigan SAVES agrees to designate a cash reserve on the Michigan SAVES balance sheet (the "Reserve Fund") for the benefit of Lender and such other lenders as Michigan Saves may enter into agreements with from time to time. Michigan SAVES will designate a portion of the Reserve Fund as the reserve fund balance available to Lender on the terms of this Agreement ("Lender's Reserve Fund Balance"). Lender's Reserve Fund Balance will be adjusted and administered as provided in this Agreement and shall be solely for the benefit of Lender as described in this Agreement. Within five business days of the date of this Agreement, Michigan Saves shall designate \$160,000.00 (the "Initial Loan Loss Reserve Amount") as the initial Lender's Reserve Fund Balance.

3.2 Adjustment after Lending Period. Within fifteen days following the end of the Lending Period, Lender will provide Michigan Saves with a current Monthly Report. The Lender's Reserve Fund Balance will be reset to an amount equal to fifty percent (50%) of the outstanding principal amount of all Program Loans listed in the Monthly Report as of the end of the Lending Period. Any amounts in excess of the reset amount of the Lender's Reserve Fund Balance shall be refunded to Michigan Saves and shall no longer be part of the Lender's Reserve Fund. The contribution to the Lender's Reserve Fund Balance for loans made after the Initial Term will be determined by mutual agreement between Michigan Saves and Lender.

3.3 Additions to Lender's Reserve Fund Balance. After the Lending Period, Michigan SAVES shall have no obligation to make additional contributions to the Lender's Reserve Fund Balance other than the Initial Loan Loss Reserve Amount.

3.4 Reductions to Lender's Reserve Fund Balance.

(a) Losses paid to Lender. The Lender's Reserve Fund Balance shall be reduced by any and all amounts paid by Michigan SAVES to Lender for Eligible Losses pursuant to Section 5 of this Agreement.

(b) Amortization of Program Loans. After the Lending Period, the Lender shall issue, as part of the Monthly Report, a report on the amortization of all outstanding Program Loans through the end of that month reporting the total principal repayment for all Lender's Program Loans during that month (the "Aggregate Amortization Amount"). The Aggregate Amortization Amount represents the amount of principal that has been repaid during that month. The Lender's Reserve Fund Balance shall be reduced by fifty percent (50.0%) of the Aggregate Amortization Amount for the prior month as reported in the Monthly Loan Report.

(c) Repayment of Program Loans. Whenever a Program Loan is repaid in full at maturity or upon early repayment in full, the Lender shall notify Michigan SAVES in writing in the Monthly Loan Report. If a Program Loan made during the Lending Period has been repaid or prepaid, then the Lender's Reserve Fund Balance shall be reduced by twenty percent (20.0%) of the repayment amount of the Program Loan which has been repaid or prepaid (to the extent not previously included Aggregate Amortization Amount pursuant to Section 3.4(b)).

3.5 Maximum Total Net Contribution. The contributions of Michigan SAVES to the Lender's Reserve Fund Balance over the term of this Agreement, net of any repayment to Michigan SAVES pursuant to Section 3.4(b), Section 3.4(c) or Section 5.6, shall in no event exceed the "Maximum Total Net Contribution". The Maximum Total Net Contribution shall be \$160,000. Michigan SAVES will maintain available funds to enable it to contribute up to the Maximum Total Net Contribution according to the terms of this Agreement. The parties may by mutual written agreement change the amount of the Maximum Total Net Contribution at any time during the term of this Agreement.

3.6 Re-evaluation. The parties agree that the terms and conditions of the Reserve Fund have been established pursuant to certain assumptions agreed to by the parties concerning loan performance and default. Actual loan losses may be different than what the parties anticipate. If it appears to the parties after two years of administration of the Program and funding of the Reserve Fund that in fact the losses on the Program Loans are fewer in number or less in amount than were projected by the parties at the time of the execution of this Agreement, the parties may, but are not required to, agree upon a reduction in the amount of contribution that must be made by Michigan SAVES to the Reserve Fund upon origination of each Program Loan.

#### **4. Administration of the Reserve Fund.**

4.1 Administration. Michigan SAVES shall administer and invest the Reserve Fund (which includes Lender's Reserve Fund Balance) in accordance with the terms of this Agreement. Michigan SAVES shall account for the Reserve Fund as a separate line on its balance sheet and shall maintain appropriate records related to that portion of the Reserve Fund which is the Lender's Reserve Fund Balance. Michigan SAVES shall provide written confirmation to the Lender of the designation and amount of the Reserve Fund and the Lender's Reserve Fund Balance. The moneys designated by Michigan SAVES as the Lender's Reserve Fund Balance within the Reserve Fund shall be held in a Michigan SAVES depository account at an institution to be selected by Michigan SAVES. Contributions made to the Reserve Fund on account of Lender shall be deposited jointly with contributions made on account of all Participation Loans. The Lender's Reserve Fund Balance will be used solely for the purposes provided in this Agreement and the Requirements. Interest or other earnings on the Reserve Fund shall accrue to and be payable to Michigan SAVES each calendar quarter. Michigan SAVES will maintain records and accounts on the Lender's Reserve Fund Balance, which will be available for reasonable inspection by the Lender. Michigan SAVES will provide Lender with a Monthly report of the balances of the Reserve Fund and the Lender's Reserve Fund Balance. Lender shall not have any lien on or pledge on any amount on deposit from time to time in the Reserve Fund (which includes the Lender's Reserve Fund Balance) or the proceeds thereof.

4.2 Payment upon Suspension of Operations. If Michigan SAVES suspends all business operations for a period of 180 days or more, then if Michigan SAVES so elects or if Lender so requests, Michigan SAVES will make a "Final Payment" in cash to Lender. That Final Payment will constitute a full and final satisfaction of all further obligations of Michigan SAVES to Lender under this Agreement. The "Final Payment" shall be equal to the Lender's Reserve Fund Balance after all adjustments required by this Agreement have been made. Following the Final Payment, the Lender shall continue to track the Program Loans and the use of the Final Payment with respect to such Program Loans. When the Lender's last Program Loan has either been repaid or the Lender has recovered its Eligible Losses, then Lender shall refund to Michigan SAVES (or its successors or assigns) any remaining amount of the Final Payment that was not used to pay Eligible Losses on Program Loans.

#### **5. Recovery from the Reserve Fund.**

5.1 Eligible Loss. Lender shall be entitled to payment from the Lender's Reserve Fund Balance on unrecovered losses on a Program Loan only after the loan is at least 90 days past due and only if Lender has exercised commercially reasonable efforts to collect the Program Loan or bring the Program Loan current in a manner consistent with its practices for other business loans that are not Program Loans. Lender may claim from the Lender's Reserve Fund Balance as unrecovered losses eighty percent (80%) of the sum of (a) the unpaid principal and (b) any unpaid interest on the Program Loan to which it is legally entitled (the 80% portion shall be individually an "Eligible Loss" and collectively the "Eligible Losses"). As a result, Lender shall retain responsibility for twenty percent (20%) of each delinquent Program Loan (the "Retention Percentage").

5.2 Claim for Recovery from Lender's Reserve Fund Balance. To claim an Eligible Loss and receive reimbursement from the Reserve Fund, the Lender shall provide to Michigan Saves (a) a written schedule itemizing the Eligible Loss claimed (80% of the unpaid principal and interest) and certifying that it is for a Program Loan that is at least 90 day past due, (b) a certification that the Lender has exercised commercial reasonable efforts to obtain recovery against the borrower, and (c) a copy of the first Monthly Report from Lender that reported such Program Loan issued pursuant to Section 2.4 above.

5.3 Loss Recovery. Whenever Lender makes a claim consistent with the terms of this Agreement for an Eligible Loss from the Lender's Reserve Fund Balance as provided above, Lender shall be entitled to payment of the Eligible Loss up to but not in excess of the amount of Lender's Reserve Fund Balance (if and only if Lender's Reserve Fund Balance at that time is a positive number) at the time that such claim for an Eligible Loss is presented to Michigan SAVES.

5.4 Timing of Payment. If the Lender makes a claim consistent with the terms of this Agreement for an Eligible Loss from the Lender's Reserve Fund Balance, Michigan SAVES shall make payment to the Lender to the extent provided above, no later than fifteen (15) days following the end of the month in which the claim is made.

5.5 Payments Limited to Reserve Fund. The aggregate liability of Michigan SAVES to Lender shall not under any circumstances exceed the Lender's Reserve Fund Balance. The Lender does not have any additional recourse against Michigan SAVES for Eligible Losses in excess of the Lender's Reserve Fund Balance at the time. The Lender acknowledges and agrees that its losses on Program Loans may exceed the funds available in the Lender's Reserve Fund Balance. This Agreement is not a guarantee of the full amount of Program Loans. Except as explicitly provided in this Agreement, Michigan SAVES is under no obligation to further contribute to or supplement the Lender's Reserve Fund Balance.

5.6 Subsequent Collection Activities. Lender agrees to use its commercially reasonable commercially reasonable efforts to collect any delinquent Program Loan, even after it has collected from the Lender's Reserve Fund Balance with respect to such Program Loan. For any recovery on a Program Loan, net of expenses, Lender shall retain 20% of such net recovery and 80% of such net recovery shall be paid to Michigan Saves.

## **6. General Terms and Conditions:**

6.1 Liability Limitation. Neither the State of Michigan, Michigan SAVES, nor any officer, director, employee, agent or agency of the State of Michigan or Michigan SAVES shall be liable or responsible for any action taken or omitted by the State of Michigan or Michigan SAVES hereunder in good faith and in the reasonable belief that such action taken or omitted is authorized or within the discretion or rights or powers conferred by this Agreement. Neither the State of Michigan nor Michigan SAVES shall be under any obligation or duty to perform any act which would involve it in expense or liability or to advance any of its own money unless

expressly provided herein. Michigan SAVES and the State of Michigan shall be fully protected in acting upon any notice, consent, statement, opinion or other paper or document provided by Lender.

6.2 Expenses. The expenses incurred by each party hereto incident to the execution, delivery and performance by each party under this Agreement, unless expressly provided herein, shall be paid for by each party.

6.3 Amendment. This Agreement may be amended at any time and from time to time by one or more writings executed by all parties hereto.

6.4 Notices. All notices shall be delivered or mailed, certified mail, to Michigan SAVES at 600 W. Saint Joseph St. Suite 10, Lansing, MI 48933-2265, Attn: Ms. Julie Bennett, and to the Lender at [INSERT ADDRESS], Attn: [Chief Financial Officer].

6.5 Severability. In case any one or more of the provisions in the Agreements are invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall be not be affected thereby.

6.6 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Michigan.

6.7 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto were upon the same instrument.

6.8 Independent Parties. This Agreement shall not be deemed to constitute the parties as partners or joint venturers, nor shall any party be deemed to constitute the other party as its agent.

6.9 Successors and Assigns. This Agreement shall be binding on the parties' successors and assigns provided that this Agreement shall not be assigned by Lender without the prior written consent of Michigan SAVES.

*[signatures appear on the following page]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as a sealed instrument by their respective authorized officers or representatives as of the date and year first above written.

MICHIGAN SAVES, INC.

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

Print name: \_\_\_\_\_

Its: \_\_\_\_\_  
Hereunto duly authorized

[NAME OF LENDER]

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

Print name: \_\_\_\_\_

Its: \_\_\_\_\_  
Hereunto duly authorized