

# Grow Maine

## Exhibit C – Investee/Principal Owner(s) Certification for Use of Investment Proceeds and Authorization to Release Information

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Legal name of or investee: \_\_\_\_\_

The Investee hereby certifies the following to the United States Department of the Treasury, the Finance Authority of Maine, and the Participant:

1. The investment proceeds will be used solely for a business purpose. A business purpose includes, but is not limited to, start-up costs; working capital; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term "business purpose" excludes acquiring or holding passive investments in real estate; the purchase of securities except as permitted in certification 2.d below, and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended (2 U.S.C. § 1602(7))).
2. The investment proceeds will not be used to:
  - a. repay delinquent federal or jurisdiction income taxes unless the borrower or investee has a payment plan in place with the relevant taxing authority;
  - b. repay taxes held in trust or escrow (e.g., payroll or sales taxes);
  - c. reimburse funds owed to any owner, including any equity investment or investment of capital for the business's continuance; or
  - d. purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.
3. The investee is not:
  - a. a business engaged in speculative activities that profit from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade;
  - b. a business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;

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- c. a business engaged in pyramid sales, where a participant’s primary incentive is based on the sales made by an ever-increasing number of participants;
  - d. a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business’s intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in Small Business Administration (SBA) Standard Operating Procedure (SOP) 50 10 6;2 or
  - e. a business deriving more than one-third of gross annual revenue from legal gambling activities.
4. No person related to the Participant making the investment who is an SSBCI insider, or a business partner or family member thereof, has a personal financial interest in Investee.

The following definitions apply to the conflict-of-interest standards for Participant:

- a. An “SSBCI insider” of the Participant is a person who, in the 12-month period preceding the date on which SSBCI funds are used for a specific investment:
  1. Was:
    - a manager or staff member, whether by employment or contract, in the Participant;
    - a government official with direct oversight or jurisdiction over the Participant, or such an official’s immediate supervisor;
    - a member of the board of directors or similar body for the Participant who, through such membership, has authority to vote on decisions to invest SSBCI funds or has authority over the employment or compensation of staff managing processes related to the investment of SSBCI funds;
    - a member of the board of directors or similar body for an independent nonprofit or for-profit entity that operates Participant; or
    - an employee, volunteer, or contractor on an investment committee or similar body that recommends or approves SSBCI investments for the Participant;or
  2. Exercised a controlling influence on state decisions regarding:
    - The allocation of SSBCI funds among approved Authorized Funds;
    - Eligibility criteria for the Authorized Funds; or
    - The processes for approving investments by Authorized Funds.

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- b. A “business partner” of an SSBCI insider is a person who owns 10 percent or more of any class of equity interest, on a fully diluted basis, in any private entity in which an SSBCI insider also owns 10 percent or more of any class of equity interest on a fully diluted basis.
- c. A “family member” of an SSBCI insider means:
  - Such person’s spouse, domestic partner, parents, grandparents, children, grandchildren, brothers, sisters, stepbrothers, and stepsisters; and
  - Any other relatives who live in the same household as the SSBCI insider.
- d. An “independent non-profit entity” means any non-profit entity that is not state sponsored.
- e. A “personal financial interest” means any financial interest derived from ownership or right to ownership of, or lending to or other investment in, a private, for-profit entity that may receive an SSBCI investment (including any financial interest derived from ownership or right to ownership of, or investment in, a venture capital fund).
- f. A “state-sponsored non-profit entity” is a non-profit entity created by state legislation to pursue policies of the state government and over which state officials exercise a controlling influence through budgetary decisions or other legislative action or direction.

Subject to the exceptions described below, SSBCI funds may not be used by Participant to make or support investments in a company or venture capital fund if an SSBCI insider, or a family member or business partner of an SSBCI insider, has a personal financial interest in the company or venture capital fund. A prohibited conflict of interest is deemed to exist even if the conflict is disclosed, or the relevant individuals recuse themselves from participating in the investment. Further, accepting a role as an SSBCI insider does not require a person to divest financial interests in a company or venture capital fund resulting from previous employment or personal investment activity. However, if a person is an SSBCI insider, any company or venture capital fund in which the insider has a personal financial interest is prohibited from receiving investments or financial support from SSBCI funds.

Exceptions to the general prohibition are as follows:

Participant may use SSBCI funds for follow-on investments in companies or venture capital funds if the entity has an existing ownership or voting interest resulting from a prior investment of SSBCI funds or non-SSBCI funds. Furthermore, in this circumstance, the entity may authorize investments if an SSBCI insider serves on the board of directors of the company or venture capital fund, if an SSBCI insider does not have a personal financial interest in the company or venture capital fund and the entity’s prior financial interest is in compliance with all applicable state laws and rules.

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An independent non-profit or for-profit entity managing or investing SSBCI funds for Participant is not precluded from authorizing follow-on investments using SSBCI funds in a company or venture capital fund in which the entity previously invested SSBCI funds or the entity has previously appointed a representative to serve on the board of directors in stewardship of the investment. However, such independent nonprofit or for-profit entity may not authorize (or seek approval from the Participant for) an investment of SSBCI funds in a company or venture capital fund in which the entity holds any type of financial interest resulting from an investment made with non-SSBCI funds.

5. No principal of the undersigned investee has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911)). For the purposes of this certification, “principal” is defined as if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds 50 percent or more ownership interest of any class of the partnership interests; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 50 percent or more of any class of equity interest in the entity; and if a partnership where the managing partner is a corporation, limited liability company, association, development company, or other entity, each director and each of the five most highly compensated executives or officers of the entity.
6. **Borrower authorizes Participant to provide this Certification, and any other information in Borrower’s application for financial assistance required to be reported, to the Finance Authority of Maine (the “Authority”) and authorizes the Authority to report such information to the United States Department of the Treasury (“Treasury”).**

**INVESTEE** (Legal Name) \_\_\_\_\_

Signature: \_\_\_\_\_

By: [Printed Name] \_\_\_\_\_

Its: [Title]/Authorized Signatory \_\_\_\_\_

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



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## PRINCIPAL OWNERS:

By: [Printed Name] \_\_\_\_\_

- Ethnicity:  Hispanic  Non-Hispanic  Prefer not to answer
- Middle Eastern Ancestry:  Middle Eastern  Not Middle Eastern  Prefer not to answer
- Veteran Status:  Veteran  Non-Veteran  Prefer not to answer
- Sexual Orientation:  Straight  Gay/Lesbian  Bisexual  Other \_\_\_\_\_  Prefer not to answer
- Race:  American Indian  Asian  Indian  Chinese  Filipino  Japanese  
 Korean  Vietnamese  Black/African American  White  Native Hawaiian  
 Samoan  Pacific Islander  Guamanian or Chamorro  Prefer not to answer

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

By: [Printed Name] \_\_\_\_\_

- Ethnicity:  Hispanic  Non-Hispanic  Prefer not to answer
- Middle Eastern Ancestry:  Middle Eastern  Not Middle Eastern  Prefer not to answer
- Veteran Status:  Veteran  Non-Veteran  Prefer not to answer
- Sexual Orientation:  Straight  Gay/Lesbian  Bisexual  Other \_\_\_\_\_  Prefer not to answer
- Race:  American Indian  Asian  Indian  Chinese  Filipino  Japanese  
 Korean  Vietnamese  Black/African American  White  Native Hawaiian  
 Samoan  Pacific Islander  Guamanian or Chamorro  Prefer not to answer

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

By: [Printed Name] \_\_\_\_\_

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

By: [Printed Name] \_\_\_\_\_

- Ethnicity:  Hispanic  Non-Hispanic  Prefer not to answer
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- Samoan  Pacific Islander  Guamanian or Chamorro  Prefer not to answer

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