AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Certified Capital Companies Act of 2003 to define certain terms, to promote investment in certain lines of business and certain geographical areas, to limit the nature of Qualified Investments, to promote accelerated distribution of capital to District businesses, to require Certified Capital Companies to substantiate each Qualified Investment, to require all Certified Capital Companies and Qualified Businesses to annually report and file certain economic development information, and to require the Commissioner to manage and issue an annual economic impact study and report.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Certified Capital Companies Improvement Amendment Act of 2010".

Sec. 2. The Certified Capital Companies Act of 2003, effective March 10, 2004 (D.C. Law 15-87; D.C. Official Code § 31-5231 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-5231) is amended as follows:

Amend § 31-5231

(1) New paragraphs (8A), (8B), and (8C) are added to read as follows:

"(8A) "Economic Impact Study" means an assessment of the performance of the Certified Capital Company program that includes:

"(A) Job growth and retention in Qualified Businesses after the receipt of
Qualified Investments, with reference to the following measures:

"(I) Overall number of jobs created and retained;

"(ii) Number of jobs created and retained in Tier One Qualified Businesses, Tier Two Qualified Businesses, and Tier Three Qualified Businesses; and

"(iii) A description of whether the jobs are full-time salaried, full-time hourly, part-time, or contract;

"(B) Estimates of the taxation revenue generated as the result of Qualified Investments, with specific reference to income tax, sales tax, and corporate tax; and

"(C) Comparison of each of the measures set forth in subparagraphs (A) and (B) of this paragraph among all Certified Capital Companies.

"(8B) "Follow-on Investment" means any Qualified Investment that a Certified

Capital Company makes in a Qualified Business that is subsequent to its Initial Investment in that Qualified Business.

"(8C) "Initial Investment" means the 1st Qualified Investment that a Certified Capital Company makes in a Qualified Business after the effective date of the Certified Capital Companies Improvement Amendment Act of 2010, passed on 2nd reading on March 16, 2010 (Enrolled version of Bill 18-402).".

(2) A new paragraph (11A) is added to read as follows:

"(11A) "Principal Business Operations" means the location where a business conducts its primary business activities, its managers and the majority of its employees work, and its material books and records are maintained.".

(3) Paragraph (12) is amended to read as follows:

"(12)(A) "Qualified Business" means a business, except as provided in subparagraph (B) of this paragraph, that meets the following qualifications as of the time of a Certified Capital Company's Initial Investment in the business:

"(i)(I) It is headquartered in the District, its Principal Business Operations are located in the District, and the Qualified Investment it receives is used solely to support its business operations in the District, except for advertising, promotions, and sales purposes; or

"(II) It is headquartered and has its Principal Business Operations located outside the District, certifies in an affidavit that the business will relocate its headquarters and its Principal Business Operations to the District within 90 days after its receipt of the Initial Investment by the Certified Capital Company, and the Qualified Investment it receives is used solely to support its business operations in the District, except for advertising, promotions, and sales purposes;

"(ii) At least 25% of its employees are residents of the District;

"(iii) At least 75% of its employees are employed in the District;

"(iv) It is a small business concern as defined in 13 C.F.R. § 121.201;

"(v) It certifies in an affidavit that the business is unable to obtain conventional financing, which means that the business has failed in an attempt to obtain funding for a loan from a bank or other commercial lender or that the business cannot reasonably be expected to qualify for financing under the standards of commercial lending;

"(vi) The business was not organized by a Certified Capital Company or an affiliate of a Certified Capital Company; provided, that this sub-subparagraph shall not prohibit a Certified Capital Company from providing financial, technical, or similar advice to a business before making an investment in such business;

"(vii) The business does not have an ownership interest, investment interest, compensation agreement, or similar financial relationship with a Certified Capital Company or any affiliate of a Certified Capital Company before the date on which a Certified Capital Company makes an Initial Investment in the business; provided, that this sub-

subparagraph shall not prohibit a Certified Capital Company from providing financial, technical or similar advice to a business before making an investment in such business.

"(B) A business shall not be a Qualified Business if it is:

"(i) A regional or national franchise;

"(ii) Primarily engaged in real estate development or leasing projects;

"(iii) Primarily engaged in insurance; or

"(iv) Engaged in the provision of professional services by accountants, lawyers, or physicians .".

(4) Paragraph (15) is amended to read as follows:

"(15) "Qualified Investment" means the investment of cash by a Certified Capital Company in a Qualified Business for the purchase of any debt, debt participation, equity, or hybrid security, of any nature and description, including a debt instrument or security which has the characteristics of debt but which provides for conversion into equity or equity participation instruments, such as options or warrants; provided, that:

"(A) Any such debt instrument shall have a maturity of at least 24 months from the date the debt is incurred; and

"(B) A Certified Capital Company, after an investment and assuming the conversion and exercise of any equity participation or hybrid security, shall not own more than 49% of the voting equity of the Qualified Business.".

(5) New paragraphs (16) through (18) are added to read as follows:

"(16) "Tier One Qualified Business" means any Qualified Business:

"(A) That did not receive a Qualified Investment prior to the effective date of the Certified Capital Companies Improvement Amendment Act of 2010, passed on 2nd reading on March 16, 2010 (Enrolled version of Bill 18-402);

"(B) That is engaged in one of the following lines of business as its primary line of business:

"(i) Healthcare services;

"(ii) Information technology;

"(iii) Environmental services/technology;

"(iv) Internet information providers;

"(v) Communication services;

"(vi) Biotechnology/research services;

"(vii) Multimedia/graphics software;

"(viii) Business management services;

"(ix) Financial services; or

"(x) Restaurant services; and

"(C) Whose Principal Business Operations are located within:

"(i) A Neighborhood Investment Program target area designated pursuant to section 4 of the Neighborhood Investment Act of 2004, effective March 30, 2004

(D.C. Law 15-131; D.C. Official Code § 6-1073); or

"(ii) The District of Columbia Enterprise Zone as defined by section 1400 of the Internal Revenue Code of 1986, approved August 5, 1997 (111 Stat. 863; 26 U.S.C. § 1400).

"(17) "Tier Two Qualified Business" means any Qualified Business that did not receive a Qualified Investment prior to the effective date of the Certified Capital Companies Improvement Amendment Act of 2010, passed on 2nd reading on March 16, 2010 (Enrolled version of Bill 18-402), that is not a Tier One Qualified Business, and that is engaged in one of the lines of business set forth in paragraph (16)(B)(i) through (x) of this section as its primary line of business.

"(18) "Tier Three Qualified Business" means any Qualified Business that did not receive a Qualified Investment prior to the effective date of the Certified Capital Companies Improvement Act of 2010, passed on 2nd reading on March 16, 2010 (Enrolled version of Bill 18-402), and that is not a Tier One Qualified Business or a Tier Two Qualified Business.".

(b) Section 6 (D.C. Official Code § 31-5235) is amended as follows: **Amend § 31-5235**

(1) Subsection (a) is amended as follows:

(A) Paragraph (2) is amended by striking the word "and" at the end.

(B) Paragraph (3) is amended by striking the period and inserting the phrase "; and" in its place.

(C) A new paragraph (4) is added to read as follows:

"(4) Within the period ending 10 years after its Allocation Date, a Certified Capital Company shall have made Qualified Investments cumulatively equal to 100% of its Certified Capital.".

(2) Subsection (b) is amended to read as follows:

"(b)(1) The aggregate cumulative amount of all Qualified Investments made by the Certified Capital Company following its Allocation Date shall be considered in the calculation of the percentage requirements under this act. Any proceeds received from a Qualified Investment may be invested in another Qualified Investment and shall count toward any requirement in this act with respect to investments of Certified Capital.

"(2) For the purposes of satisfying the percentage requirements of subsection (a) of this section only, for each Qualified Investment made after the effective date of the Certified Capital Companies Improvement Amendment Act of 2010, passed on 2nd reading on March 16, 2010 (Enrolled version of Bill 18-402), a Certified Capital Company that invests in a:

"(A) Tier One Qualified Business shall be deemed to have invested $1.25 for every dollar invested;

"(B) Tier Two Qualified Business shall be deemed to have invested $1.00 for every dollar invested;

"(C) Tier Three Qualified Business shall be deemed to have invested $0.75 for every dollar invested;

"(D) Qualified Business that receives an Initial Investment pursuant to a

waiver granted in accordance with section 9b and that fails to satisfy the eligibility criteria to receive an Initial Investment within 6 months of the date of issuance of the waiver shall be deemed to have invested $0 for every dollar invested;

"(E) Qualified Business that received a Qualified Investment prior to the effective date of the Certified Capital Companies Improvement Amendment Act of 2010, passed on 2nd reading on March 16, 2010 (Enrolled version of Bill 18-402), and receives a subsequent Qualified Investment after the effective date of the Certified Capital Companies Improvement Amendment Act of 2010, passed on 2nd reading on March 16, 2010 (Enrolled version of Bill 18-402), shall be deemed to have invested $1.00 for every dollar invested; and

"(F) Qualified Business that receives an Initial Investment or a Follow-on Investment and that fails to maintain satisfaction of the eligibility criteria to receive an Initial or a Follow-on Investment, as applicable, for 6 consecutive months after the date of the Initial or Follow-On Investment shall be deemed to have invested $0 for every dollar invested.".

(3) Subsection (c) is amended to read as follows:

"(c) Notwithstanding any other provision in this act, any Qualified Business that has received an Initial Investment may receive a Follow-on Investment if it:

"(1) Continues to meet the definition of a Qualified Business other than the requirements set forth in section 2(12)(A)(iv) and (v); and

"(2) Certifies in an affidavit that it intends to maintain its headquarters and Principal Business Operations in the District.".

(4) Subsection (e) is amended to read as follows:

"(e) A Certified Capital Company, at least 20 business days prior to making an Initial Investment or Follow-on Investment in a business, shall:

"(1) Certify in an affidavit that the business in which it proposes to invest:

"(A) In the case of an Initial Investment, is a Qualified Business; or

"(B) In the case of a Follow-on Investment, is eligible for a Follow-on Investment pursuant to subsection (c) of this section; and

"(2) Submit, along with the certification required by paragraph (1) of this subsection, an explanation of its determination that the business is eligible for an Initial Investment or Follow-on Investment.".

(5) A new subsection (e-1) is added to read as follows:

"(e-1) If, after receiving the affidavit and certification under subsection (e) of this section, the Commissioner determines that a business is not eligible for an Initial Investment or a Follow-on Investment, the Commissioner shall, within 20 days of receiving the affidavit and certification, notify the Certified Capital Company of the determination and provide an explanation.".

(6) Subsection (g)(2)(C) is amended to read as follows:

"(C)(i) All Qualified Investments that the Certified Capital Company made during the previous calendar year, including the number of employees of each Qualified Business in which it has made investments at the time of such investment and as of December

1st of the preceding calendar year; and

"(ii) For any Qualified Business in which the Certified Capital Company no longer has an investment, the Certified Capital Company shall provide employment figures for the Qualified Business at the time of such investment and as of the last day before the investment was terminated.".

(7) A new subsection (h) is added to read as follows:

"(h) After the effective date of the Certified Capital Companies Improvement Amendment Act of 2010, passed on 2nd reading on March 16, 2010 (Enrolled version of Bill 18-402), if a Certified Capital Company makes a Qualified Investment in a business that relocates its Principal Business Operations outside the District prior to the termination of the Qualified Investment or within 6 months after the termination of the Qualified Investment, the cumulative Qualified Investments that the Certified Capital Company will be deemed to have made for the purposes of section 7 will be reduced by the amount of the Qualified Investment in the business that relocated its Principal Business Operations outside the District, unless the business demonstrates that it has returned its Principal Business Operations to the District within 3 months of the relocation.".

Amend § 31-5236

(c) Section 7 (D.C. Official Code § 31-5236) is amended by adding a new subsection (a-1) to read as follows:

"(a-1) Notwithstanding any other provision in this act, if, pursuant to section 6(a)(4), a Certified Capital Company has not made Qualified Investments cumulatively equal to 100% of its Certified Capital within 10 years after its Allocation Date, the Certified Capital Company shall be prohibited from using its Certified Capital to pay its management fees.".

Amend § 31-5237

(d) Section 8 (D.C. Official Code § 31-5237) is amended as follows:

(1) Subsection (b) of this section is amended by striking the phrase "section 6" wherever it appears and inserting the phrase "this act" in its place.

(2) Subsection (c) of this section is amended by striking the phrase "section 6" and inserting the phrase "this act" in its place.

(3) Subsection (g) is repealed.

(e) New sections 9a and 9b are added to read as follows:

"Sec. 9a. Compliance and economic impact.

"(a) Information, records, or other data received, prepared, used, or retained by the Commissioner pursuant to this subsection shall not be subject to the disclosure requirements of the Freedom of Information Act, effective March 29, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), to the extent that:

"(1) The information, records, or other data describe the commercial and financial operations or intellectual property of a business entity or individual;

"(2) The information or records have not been publicly disseminated at any time; and

"(3) Disclosure of the information or records may put the business entity or individual at a competitive disadvantage.

"(b)(1) A Certified Capital Company shall receive and consider applications from every business interested in obtaining funds from the Certified Capital Company. The Certified Capital Company shall maintain a registry of all contacts made with every person or business that contacts the Certified Capital Company for the purpose of obtaining funding. The registry shall be made available to the Commissioner for inspection.

"(2) A Certified Capital Company shall provide, at the Commissioner's request, the Commissioner with a detailed written explanation explaining its decision to fund or to decline to fund a prospective business. A Certified Capital Company providing a written explanation pursuant to this paragraph shall include a copy of the prospect's business plan, financial statements, or other documents submitted by the person or business seeking funding. A Certified Capital Company shall also submit to the Commissioner all internal business analysis documents, if any, prepared by the Certified Capital Company that were considered during its decision-making process.

"(3) A Certified Capital Company that declines to provide funding to any business shall promptly communicate its decision in writing to the business seeking the funding. The letter shall include a detailed statement describing the reason the Certified Capital Company declined to fund the business. A copy of the letter shall be sent to the Commissioner.

"(c)(1) Each Qualified Business shall once a year provide the Certified Capital Companies from which it has received a Qualified Investment with a report stating the number and type of jobs created and retained in total and in the District, salaries paid to each employee, taxes paid to the District, money spent with local businesses or persons, including landlords, major suppliers and vendors, accountants, auditors, attorneys, and others, and whether such businesses or persons are located in the District or elsewhere.

"(2) Each Qualified Businesses shall provide the Certified Capital Company with documents, such as leases, invoices, payroll reports, employment records, tax returns and contracts, in support of the reports required by paragraph (1) of this subsection. The Certified Capital Company shall maintain the reports and supporting documents for a period of not less than 5 years from the date of receipt and shall make this information available to the Commissioner during the annual review.

"(d) Notwithstanding any other provision in this act, the Commissioner shall promptly make available to the Council and its committees, upon their request, any information made available to or otherwise in the possession of the Commissioner pursuant to this act.

"(e) The Commissioner shall conduct an Economic Impact Study once a year, beginning with the year ending December 31, 2009, and ending with the year ending December 31, 2014, to determine the economic impact of the Certified Capital Company program on the District's economy. The Certified Capital Companies shall require its Qualified Businesses to provide all information necessary, as determined by the Commissioner or his or her designee, to complete the study. A detailed written report shall be prepared at the conclusion of the study. The Commissioner may retain consultants, economists, and other experts to conduct the Economic Impact Study. The costs of these experts shall be borne by the Certified Capital

Companies in proportion to the amount of Certified Capital invested in each Certified Capital Company.

"(f) The Commissioner may subject a Certified Capital Company to an administrative penalty not to exceed $25,000 for any violation of this section, subject to the hearing requirements set forth section 20a of in the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-509). Prior to imposing a penalty under this section, the Commissioner shall provide the Certified Capital Company with written notice of the violation and at least 30 days to cure the violation.

"Sec. 9b. Waivers and disqualifications.

"The Commissioner may grant a business a 6-month waiver from any of the eligibility criteria to receive an Initial Investment if the Commissioner finds that the business will meet the eligibility criteria to receive an Initial Investment within 6 months of the date of issuance of the waiver. The waiver shall expire 6 months after it is issued and a business shall not receive an additional waiver pursuant to this section. Upon satisfaction of all eligibility criteria within the 6-month period, the business shall promptly provide the Commissioner with an affidavit stating that the business has satisfied the eligibility criteria to receive an Initial Investment and shall provide any supporting documents requested by the Commissioner.".

Sec. 3. Applicability.

This act shall not apply to any Qualified Investment or distribution made by any Certified Capital Company prior to the effective date of this act.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia