

Capital Access Program (CAP) Notice and Waiver Form

Lender Institution: _____

Loan #: _____

The undersigned borrower (the "Borrower") acknowledges and understands:

- a. that the loan to be made by _____ to the Borrower in the total principal amount of \$_____ will be filed for enrollment by the Lender in accordance with the requirements of the Capital Access Program (the 'Program'), a program established by the Business Finance Authority of the State of New Hampshire (the 'Authority'), an agency of the State of New Hampshire;
- b. that as a condition of having the loan filed for enrollment in the Program, the Borrower is required to make a non-refundable payment to the CAP Reserve Fund, which CAP Reserve Fund is established by the Authority to help cover losses that the Lender may sustain on any loans enrolled in the Program; and
- c. that the Borrower's non-refundable payment will be collected by the Lender for transmittal to the CAP Reserve Fund, and that other payments or transfers will be made to the CAP Reserve Fund by the Lender and the Authority.

The Borrower acknowledges the foregoing and hereby represents and warrants that it has no, and has not been promised or told by anyone that it has any, legal, beneficial or equitable interest in the aforementioned non-refundable payment or any other funds credited to the CAP Reserve Fund and hereby waives any right, claim or interest to any and all such funds paid or credited to the CAP Reserve Fund from time to time.

It is important to emphasize that the loan is a private transaction between the lender and the borrower. While the program may assist a lender in being able to take more risk than normal, it is important to understand that it is still the lender that is bearing the risk of the loan. The Authority is not a party to the loan and plays no role at all in the lender's decision regarding whether or not to make the loan, or in the setting of the interest rate, fees, duration, or any other terms or conditions of the loan. The lender's rights and remedies are delineated in the loan instruments and in law applicable to any lender financing. The Authority plays no role in any decision by the lender with respect to enforcing the lender's rights under the loan contract. Accordingly, the undersigned borrower hereby waives any and all claims against the Authority arising from the making, servicing or collection by _____ of the loan to the borrower.

While the program is intended to assist the lender in providing you with access to lender financing, you should understand that it is likely to be more expensive for the borrower than would be the case with a conventional lender loan. Not only does the borrower make a payment to the reserve, but it is expected that the lender may, in some manner, recover from the borrower the cost of the lender's payment into the reserve.

The Borrower certifies that:

- I. It is authorized to conduct business in New Hampshire, had prior year sales of less than \$5,000,000 and has 500 or less employees.
- II. The proceeds of the Loan will be used for Business Purposes, which include start-up costs, working capital, franchise fees, equipment, inventory, as well as the purchase, construction, renovation, or tenant improvements of a place of business that is not for passive real estate investment purposes.
- III. The proceeds of the Loan will not be used:
 - a. To repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
 - b. To repay taxes held in trust or escrow (e.g., payroll or sales taxes);
 - c. To reimburse funds owed to any owner, including any equity injection or injection of capital for the Borrower's continuance;
 - d. To purchase any portion of the ownership interest in the Borrower; or
 - e. For activities that relate to acquiring or holding passive investments, such as commercial real estate ownership and the purchase of securities; and lobbying activities, as defined in section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.
- IV. The Borrower is not an executive officer, director, or principal shareholder of the Lender, a member of the immediate family of an executive officer, director or principal shareholder of the Lender, or a related interest of an executive officer, director, or principal shareholder of the Lender. For the purpose of this provision, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" shall refer to the same relationship to the Lender, whether or not the Lender 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 to Part 215 which may be made from time to time.
- V. The Borrower is not:
 - a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the Borrower and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the Borrower;
 - b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company Community Development Financial Institution (CDFI);
 - 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 applicable law in the jurisdiction where the business is located or conducted, including the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution; or
 - e. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales.
- VI. No Principal of the Borrower 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 means the following: if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds 20% or more ownership in the partnership; and, if a corporation, limited liability company, association or development company, 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 20% or more of the ownership stock or stock equivalent of the entity.

The Borrower separately grants permission to the Lender to share Borrower’s loan records relating to any Loan with the U.S. Department of the Treasury Inspector General, subject to the Right to Financial Privacy Act (12 U.S.C. § 3401 *et seq.*).

Borrower’s Current Number of Employees: Full Time _____ Part Time _____

Borrower’s Expected Number of Employees in 12 Months from this Agreement:

Full Time _____ Part Time _____

Voluntary Disclosure of Gender and Ethnicity

This section of the enrollment form may be voluntarily completed by the Borrower in order to assist the Program with tracking the effectiveness of the Program in reaching certain groups. It is not mandatory and the failure to complete this section will not affect the eligibility of the loan for enrollment in the Program.

Gender (check one): Male _____ Female _____

Ethnicity (check as many that apply):

White: _____ Asian-American: _____ African-American: _____

American Indian: _____ Hispanic: _____ Other: _____

Borrower Signature

Date

Borrower Signature

Date