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New Hampshire Business Finance Authority

May 29, 2024

His Excellency, Governor Christopher T. Sununu and
The Honorable Executive Council
State House
Concord, New Hampshire 03301

Execution of Standard Contract by Service Federal Credit Union "Capital Access Program: Lender Participation Agreement"

Dear Governor and Council:

REQUESTED ACTION

Holding of a public hearing and passage of a resolution entitled: A RESOLUTION UNDER RSA 162-A:18 APPROVING THE EXECUTION OF THE STANDARD CONTRACT ENTITLED "CAPITAL ACCESS PROGRAM: LENDER PARTICIPATION AGREEMENT" OF THE BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE" BY SERVICE FEDERAL CREDIT UNION. (For the text of the requested Resolution see Exhibit 1 attached to this letter of transmittal.)

The Business Finance Authority of the State of New Hampshire (the "Authority") respectfully requests that you hold a hearing and make the statutory findings under RSA 162-A:18, with respect to the proposed execution of the standard contract of the Authority entitled "CAPITAL ACCESS PROGRAM: LENDER PARTICIPATION AGREEMENT" between the Authority and Service Federal Credit Union (the "Specific Credit Union"). The Authority recommends your favorable action and submits in support thereof the following materials with the Exhibit designations of the attached documents:

1. a proposed resolution for adoption by the Governor and Council

2. a certificate of the Executive Director of the Authority certifying that, based upon examination, the Specific Credit Union is a duly organized bank or trust company or credit union authorized to make loans and accept deposits in the State of New Hampshire and accordingly is qualified to participate in the Authority's Capital Access Program and to execute the standard Lender Participation Agreement

3. a draft copy of the Standard Contract for approval by The Governor and Council, which when executed and delivered will evidence Service Federal Credit Union's agreement to comply with the Capital Access Program's guidelines and policies; and

The Authority respectfully requests that the Governor and Council approve the execution of the Standard Contract with the Service Federal Credit Union and make all findings as outlined in the submitted resolution.

The Authority would be pleased to furnish any additional documentation and information which you may request.

Respectfully submitted,

BUSINESS FINANCE AUTHORITY
OF THE STATE OF NEW HAMPSHIRE

By: _____
James Key-Wallace
Executive Director

A RESOLUTION UNDER RSA 162-A:18 APPROVING THE EXECUTION OF THE STANDARD CONTRACT ENTITLED "CAPITAL ACCESS PROGRAM: LENDER PARTICIPATION AGREEMENT" OF THE BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE BY SERVICE FEDERAL CREDIT UNION

WHEREAS, the Governor and Council (the "Governor and Council") of the State of New Hampshire (the "State") have by way of this resolution dated May 29, 2024 (the "Approving Resolution"), upon recommendation of the Business Finance Authority of the State of New Hampshire (the "Authority"), approved the Authority's execution of the standard contract entitled "CAPITAL ACCESS PROGRAM: LENDER PARTICIPATION AGREEMENT" with Service Federal Credit Union (the "Standard Contract") ; and

WHEREAS, at the time of such approval, the Governor and Council shall make, upon recommendation of the Authority, certain findings and determinations pursuant to RSA 162-A:18 with respect to the approval of the Standard Contract, which findings and determinations are stated in this Approving Resolution;

WHEREAS, by this Approving Resolution, the Governor and Council authorize the Authority to take necessary and appropriate steps to cause the execution of the Standard Contract with Service Federal Credit Union; and

WHEREAS, acting pursuant to the direction of the Authority, the Executive Director of the Authority has received interest from Service Federal Credit Union to execute the Standard Contract and participate in the Authority's Capital Access Program through such execution; and

WHEREAS, the Executive Director of the Authority has examined such information as he has deemed necessary and appropriate and has determined that Service Federal Credit Union is a duly organized bank or trust company or credit union authorized to make loans and accept deposits in the State of New Hampshire and accordingly is qualified to execute the Standard Contract and participate in the Capital Access Program;

WHEREAS, the Governor and Council have received all the documentation and information with respect to the proposed execution of the Standard Contract which they have requested;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

Findings and Determinations. On the basis of the documentation and information received by the Governor and Council, and assuming (1) the execution of the Standard Contract as approved by the Governor and Council on May 29, 2024, by the Authority and an authorized officer of Service Federal Credit Union, and (2) review and acceptance of the executed Standard Contract by an appropriate official of the Office of Attorney General upon receipt of a certificate of registration of Service Federal Credit Union and a resolution of the board of directors of Service Federal Credit Union authorizing execution of the Standard Contract, the Governor and Council hereby find:

a. The proposed execution of the Standard Contract and the actions of the Authority and parties executing such Standard Contract taken pursuant to the terms of such Contract will serve a public use and provide a public benefit.

b. The proposed execution of the Standard Contract and the actions of the Authority and parties executing such Standard Contract taken pursuant to the terms of such Contract is within the policy of, and the authority conferred by RSA Chapter 162-A.

c. The proposed execution of the Standard Contract and the actions of the Authority and parties executing such Standard Contract taken pursuant to the terms of such Contract will preserve or increase the social welfare or economic prosperity of the state and one or more of its political subdivisions, and will promote the general welfare of the state's citizens.

d. The proposed execution of the Standard Contract and the actions of the Authority and parties executing such Standard Contract taken pursuant to the terms of such Contract will promote the orderly development of business activities, create or preserve employment opportunities, or protect the physical environment.

e. Appropriate measures have been taken to ensure that Service Federal Credit Union participating under the terms of such Standard Contract makes only loans which meet the requirements of RSA 162-A:12, IV.

f. The Standard Contract complies with RSA 162-A:12, III.

g. Reasonable precautions have been taken to minimize the risk of loss to any reserve fund which is established under the terms of the proposed Standard Contract.

h. Service Federal Credit Union is qualified to execute the Standard Contract and to participate under the terms of such Standard Contract and the applicable provisions of RSA Chapter 162-A.

Therefore, subject to (1) the execution of the Standard Contract as approved by the Governor and Council on May 29, 2024, by the Authority and an authorized officer of Service Federal Credit Union, and (2) review and acceptance of the executed Standard Contract by an appropriate official of the Office of Attorney General upon receipt of a certificate of registration of Service Federal Credit Union and a resolution of the board of directors of Service Federal Credit Union authorizing execution of the Standard Contract, the Governor and Council approve the proposed execution of the Standard Contract by the Authority and authorize the Authority to take such further action with respect to such proposed execution as is necessary and appropriate to carry out the proposed transaction.

Effective Date. This resolution shall take effect upon its passage.

Passed and Agreed to May 29, 2024.

_____

Governor Christopher T. Sununu

_____

Councilor Joseph D. Kenney

_____

Councilor Cinde Warmington

_____

Councilor Janet Stevens

_____

Councilor Theodore L. Gatsas

_____

Councilor David K. Wheeler

CERTIFICATION OF THE EXECUTIVE DIRECTOR OF THE BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE AS TO THE QUALIFICATION OF SERVICE FEDERAL CREDIT UNION TO EXECUTE THE STANDARD CONTRACT ENTITLED "CAPITAL ACCESS PROGRAM: LENDER PARTICIPATION AGREEMENT" AND TO PARTICIPATE IN THE AUTHORITY'S CAPITAL ACCESS PROGRAM

I, the undersigned, HEREBY CERTIFY that the following are true and correct.

1. At a meeting of the Board of Directors of the BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE, duly called and held on April 15, 2024, at which a quorum was present and acting throughout, the Board, after approving the final form of the contract entitled "CAPITAL ACCESS PROGRAM: LENDER PARTICIPATION AGREEMENT" (the "Standard Contract"), adopted the following resolution:

RESOLVED, that the Executive Director is authorized, empowered and directed to execute in the name and on behalf of the Authority the Standard Contract with any banking institution which qualifies to participate in the Capital Access Program, and the Executive Director is further authorized, empowered and directed to file such executed agreements or other materials and information which is necessary and appropriate to enable the approval of each such executed agreement by the Governor and Council.

2. Acting pursuant to such delegation of authority, I have received and reviewed a request by Service Federal Credit Union (the "Specific Credit Union") to execute the Standard Contract and, subject to receipt of a certificate of registration of the Specific Credit Union and a resolution of the board of directors of the Specific Credit Union authorizing execution of the Standard Contract, I will determine that the Specific Credit Union is a duly organized bank or trust company or credit union authorized to make loans and accept deposits in the State of New Hampshire and accordingly is qualified to execute the Standard Contract and to participate in the Authority's Capital Access Program.

IN WITNESS WHEREOF, I have set hereunto my hand and affixed the seal of the Business Finance Authority of the State of New Hampshire on this 15th day of April 2024.

James Key-Wallace
Executive Director

BUSINESS FINANCE AUTHORITY
OF THE
STATE OF NEW HAMPSHIRE

Capital Access Program: Lender Participation Agreement

AGREEMENT made the _____ day of _____, _____, by and between the Business Finance Authority of the State of New Hampshire, a public body corporate and politic in the State of New Hampshire, whose address is 135 North State Street, Concord, New Hampshire 03301-4954 (the "BFA"), and

Lender: _____

Address: _____

_____

the "Lender").

WHEREAS, the BFA has been created by Chapter 162-A of New Hampshire's Revised Statutes Annotated, as amended by Chapter 262 of 1992 NH Laws (the "Act"), with the power under RSA 162-A:12 to provide credit security for certain business endeavors; and

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

WHEREAS, the BFA has determined that providing credit security will promote and serve the intended purposes of and in all respects will conform to the provisions and requirements of the Act; and

WHEREAS, the BFA and the Lender desire to set forth the terms and conditions of the credit security that will apply if the Lender decides to make loans under the Program.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Definitions**. The following terms shall have the meanings indicated:

(a) "Accrued Interest" means with respect to any Loan the sum of: (i) interest which has accrued at the rate of interest stated in the documents evidencing the Loan which is applicable during any period prior to an event of default under the Loan (and shall not include any amount computed pursuant to a "default" or "Penalty" rate of interest or other late charges which such Loan documents may require as a result of default) prior to and during the 90-day period ending on at the close of business on the ninetieth day following the date on which the Lender provides written notice of demand and acceleration to the Borrower (the "Acceleration Date"); and (ii) an amount of interest determined by applying the Claim Preservation Rate of Interest to the sum of outstanding principal and interest accrued under the immediately preceding clause (i) beginning on the 91st day following the Acceleration Date and ending on the date the Loan is charged off pursuant to a determination required under paragraph 8(a).

(b) "Affiliate of the Borrower" means any person or entity directly or indirectly controlled by the Borrower or directly or indirectly controlling the Borrower. For purposes of this definition, a person controls another person if such person directly or indirectly, or acting through or in concert with one or more persons: (i) owns, controls, or has the power to vote 50 percent or more of any class of voting securities or interests of

the other person; (ii) controls in any manner the election or appointment of a majority of the directors or management of the other person; or (iii) has the power to exercise a controlling influence over the management or policies of the other person.

(c) "Aggregate Borrower Obligations" means all obligations of the Borrower for any of the following:

(i) payments of principal and interest with respect to money borrowed pursuant to a Loan;

(ii) payments under a lease which is capitalized in accordance with generally accepted accounting principles having an original term, or renewable at the option of the lessee for a period from the date originally incurred, longer than one year; and

(iii) payments under an installment purchase contract which has an original term in excess of one year.

(d) "Annual Debt Service" means as to any 12-month period of time, the aggregate of the scheduled payments to be made with respect to Aggregate Borrower Obligations.

(e) "Borrower" means the recipient of a Loan which is, has been, or will be filed by the Lender for enrollment under the Program.

(f) "CAP Reserve Fund" means an administrative account created and maintained by the BFA on the books of the BFA to account for funds accumulated pursuant to paragraph 7 to cover any losses sustained by the Lender on Enrolled Loans.

(g) "CAP Reserve Payment" means the payments required to be made to the CAP Reserve Fund by the Lender and Borrower upon enrollment of a Loan pursuant to paragraph 7.

(h) "CAP Security Payment" means the payment required to be made to the CAP Reserve Fund by the BFA pursuant to paragraph 7.

(i) "Cash Flow Available for Debt Service" means as to any applicable 12-month period of time, net income or excess of gross revenues over expenses before depreciation, amortization and interest, as determined in accordance with generally accepted accounting principles consistently applied.

(j) "Claim" means any claim filed by the Lender pursuant to paragraph 8.

(k) "Claim Preservation Rate of Interest" means the effective rate of interest per annum paid by the Federal Reserve for overnight federal funds transactions with member banks as such rate exists at the beginning of business on the ninety-first day after the Acceleration Date, and as adjusted thereafter every 180 days.

(l) "Covered Loan Percentage" means the fraction of an Enrolled Loan which is secured by the CAP Reserve Fund as that fraction is determined pursuant to paragraph 6.

(m) "Eligible Loan" means a Loan for which each of the representations and warranties as set forth in paragraph 4 is true and correct.

(n) "Enrolled Loan" means a Loan enrolled by the BFA under the Program pursuant to paragraph 5.

(o) "Gross Loan Amount" means the total amount of funds stated in the terms of the Loan documents which are to be advanced pursuant to a Loan. With respect to a Loan which may be made pursuant to a line of

credit agreement, the Gross Loan Amount shall equal the maximum stated amount of principal which may be advanced under the terms of such agreement.

(p) "Lender Insider" means an executive officer, director, or principal shareholder of the Lender, or a member of the immediate family of an executive officer, director or principal shareholder of the Lender, or a related interest of such executive officer, director, 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 as 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 of such Part 215 which may be made from time to time.

(q) "Loan" means any advance of money to a Borrower by a lender which is evidenced by a promissory note or other instrument which obligates the Borrower to repay the advance. The establishment of a line of credit shall constitute a Loan equal to the Gross Loan Amount. For Lines of Credit, Lender may either: (a) have a loan term of whatever length and period it chooses, but it will no longer be considered an Enrolled Loan after ten (10) years; or (b) require a covenant that the outstanding balance of a line of credit must be brought to $0 for a period of at least 30 consecutive days annually; if the line is not reduced to $0 for the prescribed time period, it shall be termed out over a period not to exceed three (3) years; in such case under (b), it will be considered an Enrolled Loan as long as said loan is active with the Lender.

(r) "Minimum Deposit Amount" means: (i) if the balance of the CAP Reserve Fund is less than $5,000, the balance of the CAP Reserve Fund; and (ii) if the balance of the CAP Reserve Fund is greater than $5,000, the greater of $5,000 or 25 percent of the balance of the CAP Reserve Fund.

(s) "Net Proceeds of a Loan" means the Gross Loan Amount less costs incurred in issuing the Loan which are paid by the Borrower out of the gross proceeds of the Loan.

(t) "New Hampshire Business Activity" means, except as otherwise provided in this paragraph 1(t), any trade or business activity primarily carried on within the State of New Hampshire. The term "New Hampshire Business Activity" shall include, but is not limited to, start-up costs, working capital, franchise fees, equipment, inventory, as well as the purchase, construction, renovation or tenant improvements to a place of business that is not for Passive Real Estate investment purposes; New Hampshire Business Activity shall not include the acquisition, construction, ownership, renting, improving, repairing or maintaining of any Residential Real Property; provided, however, that if the Net Proceeds of a single Loan are to be applied both to a New Hampshire Business Activity and to acquire, construct, own, rent, improve, repair or maintain Residential Real Property, and not more than 25 percent of the Net Proceeds of such Loan is to be applied to acquire, construct, own, rent, improve, repair or maintain Residential Real Property, then the entire Loan shall be treated as being applied to support a New Hampshire Business Activity. The term "New Hampshire Business Activity" shall include the refinancing of outstanding borrower obligations, but only if such refinancing supports a New Hampshire Business Activity and does <u>not</u> involve the refinancing of any existing Loan already on the books at the same Lender or affiliate of the Lender.

(u) "Outstanding Borrower Obligations to the Lender" means the outstanding contractual obligations owed by a Borrower or any Affiliate of the Borrower to the Lender or an affiliate of the Lender as determined by applicable federal or state laws or regulations.

(v) "Passive Real Estate" means any real estate which is not occupied, used or in development by the Borrower; provided, however, that the term "Passive Real Estate" shall not include real estate which is to be occupied, used or developed for the Borrower's New Hampshire Business Activity through direct application of the proceeds of an Enrolled Loan.

(w) "Permitted Investment" means any of the following, if and to the extent the same are at the time legal for the investment of the BFA's money:

(i) direct general obligations of, or obligations the timely payment of principal and interest on which are unconditionally guaranteed by, the United States of America;

(ii) direct general obligations of, or obligations the timely payment of principal and interest on which are unconditionally guaranteed by, the State of New Hampshire; and

(iii) deposits, certificates of deposit, or other similar banking arrangements, with banks or savings associations authorized to conduct a banking business in the State of New Hampshire.

(x) "Program" means the Capital Access Program established and implemented by the BFA pursuant to Section 12 of the Act.

(y) "Qualifying Borrower" means any Borrower: (1) whose gross sales revenues for the Borrower's fiscal year immediately preceding its current fiscal year did not exceed $5,000,000, and (2) has 500 or fewer employees

(z) "New Business" means a borrower who has been in business for less than 2 years and includes any Loans to a Borrower to purchase an existing business or any interest therein, no matter how long the existing business has been in operation.

(aa) "Residential Real Property" means any real estate or portion of real estate which is used primarily for residential purposes, whether such real estate is occupied by the owner or other persons.

(bb) "Internal Restructure Loan" means that portion of a Loan which is to be applied directly or indirectly to refinance Outstanding Borrower Obligations to the Lender.

2. **Representations and Warranties of the BFA**. At the execution and delivery of this Agreement and as of the time of the enrollment of any Loan, the BFA represents and warrants:

(a) Valid Existence. The BFA is a public body corporate and politic established and acting pursuant to the Act.

(b) Due Authorization, Enforceability, No Violation. The BFA has the necessary power under the Act, and has duly taken all action on its part required to authorize, execute and deliver this Agreement. This Agreement when executed shall be valid, binding and enforceable against the BFA in accordance with its terms. The execution and performance of this Agreement by the BFA will not violate or conflict with any instrument by which the BFA is bound.

3. **Representations and Warranties of the Lender Made at Execution and Delivery of This Agreement**. At the execution and delivery of this Agreement, the Lender represents and warrants:

(a) Due Organization and Qualification. The Lender is a duly organized bank or trust company authorized to make loans and accept deposits in the State of New Hampshire.

(b) Due Authorization, Enforceability, No Violation. The Lender has all necessary power and has duly taken all action on its part to authorize, execute and deliver this Agreement. This Agreement when executed shall be valid, binding and enforceable against the Lender in accordance with its terms. The execution and performance of this Agreement by the Lender will not violate or conflict with any instrument, agreement, order or decree by which the Lender is bound.

(c) Current Tax Status. The Lender has filed all tax returns (federal, state and local) required to be filed and paid taxes shown thereon to be due, including interest and penalties, or, to the extent the Lender has not paid such taxes, the Lender is contesting in good faith an assertion of liability based on such returns.

4. **Representations and Warranties of the Lender Made at Each Enrollment Time**. With respect to any Loan that the Lender files for enrollment hereunder, the Lender represents and warrants as of the time of each such filing:

(a) Representations Obtained from Borrower. The Lender has obtained from the Borrower the Borrower Certifications attached hereto and incorporated herein as **Schedule 1(a) – (d)**, and, to its actual knowledge, the Lender has no substantial reason to believe based on information available to it that any such representation or warranty is not true in the Borrower Certifications.

(b) Lender Representations and Warranties.

(i) The amount equal to the sum of the products of the applicable Covered Loan Percentages multiplied by the outstanding principal balances of each Enrolled Loan by the Lender to the Borrower or any Affiliate of the Borrower, including the Loan to be enrolled, does not exceed $500,000. In making this representation, the Lender may rely upon certifications as to the identities of Affiliates of the Borrower provided to the Lender by Borrower.

(ii) The Lender has obtained from the Borrower an executed Notice and Waiver in the form attached as **Schedule 2**.

(iii) The Lender has complied in all material respects with all federal and state laws, statutes, rules and regulations pertaining to the making of the Loan.

(iv) The Lender shall service each Enrolled Loan in accordance with its standard policies and procedures, and in accordance with the standard of loan servicing employed by the Lender for its commercial loan portfolio generally.

(v) Immediately upon making the Loan, to the Lender's actual knowledge, neither the Borrower nor any Affiliate of the Borrower will be in material violation of any term of any mortgage, loan agreement or indenture with the Lender.

(vi) The Lender has provided in writing to the BFA the Lender Certifications attached hereto and incorporated herein as **Schedule 3(a) & (b)**.

(vii) The BFA has not directly or indirectly controlled or influenced the Lender's decision to make the Loan.

(viii) The Lender has determined that the Loan is an Eligible Loan and the Lender has completed all documents required to be filed in accordance with the terms of the Agreement.

(ix) The Lender is not operating under any supervisory enforcement action of any federal or state agency, entity or department; should Lender be required or requested to operate under any such supervisory enforcement action subsequent to the date of this Agreement, then Lender shall promptly notify the BFA in writing of such event.

5. **Enrollment of Loans in the Program**.

(a) Form of Loan. 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 lawfully agree, subject to the provisions of this Agreement. Only an Eligible Loan may be enrolled under the Program.

(b) Enrollment Procedure. In order to enroll a Loan under the Program, the Lender shall satisfy the following requirements no later than the close of business on the fifteenth calendar day after the date on which the Loan documents have been executed and delivered and the Lender has obligated itself to disburse proceeds of the Loan:

(i) The Lender shall deliver to the BFA one original of the Loan Filing Form, in the form attached as **Schedule 4** or **Schedule 5** in completed form, bearing an execution signature of an authorized officer of the Lender. For the purposes of this Agreement: (a) an original may constitute a copy of the original transmitted via electronic mail in portable document format (PDF), or an electronic copy of the fully e-signed documents from the BFA's on-line enrollment platform; (b) the filing of a Loan for enrollment shall be deemed to occur on the date on which the Lender delivers to the BFA, delivers to a professional courier service for delivery to the BFA, electronically transmits to the BFA, or mails to the BFA, the documentation required by this subparagraph 5(b)(i).

(ii) The Lender shall deposit the required CAP Reserve Payment with respect to the Loan in accordance with paragraph 7(b), and shall deliver to the BFA evidence that such deposit has occurred, in accordance with procedures specified by the BFA.

(iii). For any Loan of $50,000 or more which is enrolled in the Program, the Lender shall deliver to the BFA a complete copy of the Lender's write-up and analysis of the Loan.

(c) Enrollment by the BFA. Upon the Lender's satisfaction of the requirements specified in paragraph 5(b), the BFA shall enroll the Loan at the Covered Loan Percentage required under this Agreement and shall make the required CAP Security Payment in accordance with paragraph 7(c).

(d) Termination of Enrollment. If the outstanding balance of an Enrolled Loan that is not a line of credit is reduced to zero, such Loan shall no longer be considered an Enrolled Loan. The Lender may extend the term of an Enrolled Loan that is not a line of credit for an additional time period equal to the original stated term of such Enrolled Loan. Unless otherwise approved by the BFA, upon conclusion of such an additional time period, the Enrolled Loan shall no longer be considered an Enrolled Loan. Accordingly, subject to the limitation of paragraph 7(e), in order to be enrolled under the Program for periods beyond such additional time period, a Loan which is not a line of credit shall be treated as a new Loan which must be newly enrolled under the Program and for which new payments must be paid pursuant to paragraph 7, unless otherwise approved by the BFA. If at the end of the term or extended term of an Enrolled Loan there remains an outstanding balance owed to the Lender solely because the Borrower is in default, then such a Loan shall remain an Enrolled Loan and shall not be treated as a new loan until the default of the Borrower is cured or such balance is reduced to zero.

(e) Internal Restructure Loans. If the Lender wishes to refinance an existing Lender debt, only the increased amount of the loan (so-called 'new' money) can be enrolled in the Program and is eligible for coverage from the CAP Reserve Fund. However, if the existing Lender debt is already enrolled in the Program, it may continue to be enrolled in the Program as part of the new Loan made by Lender. If a Loan is comprised of both an ineligible Internal Restructure Loan portion and an eligible portion which is not an Internal Restructure Loan, then the Lender must use paragraph 6(g) and elect a maximum amount of principal for which a Claim may be made which does not exceed that eligible part of such Loan which is not an Internal Restructure Loan.

(f) Loans to New Businesses. In order to enroll a Loan to a New Business under the Program, the Lender shall certify that the Loan meets the following guidelines: (i) The Borrower has contributed in cash at least 20% of the total cost of starting the business (for the avoidance of doubt, home equity or any borrowed funds cannot be counted as cash) (ii) The Loan is secured by all available assets, including a first security lien on all assets financed with loan proceeds. If business assets do not fully secure the Loan, the personally-owned assets of the Borrower's principals have been pledged as additional collateral; (iii) The Loan is personally guaranteed by all principals of the Borrower with at least 20% ownership in the business; (iv) Current personal financial statements of all guarantors either are on file with the Lender or were reviewed by the Lender; and, (v) income projections were reviewed by the Lender to determine their validity.

6. **Determination of Covered Loan Percentage**. With respect to any Enrolled Loan, the Covered Loan Percentage shall be determined at the time of enrollment in accordance with this paragraph 6.

(a) General Rule. Subject to the specific exceptions set forth below, the Covered Loan Percentage with respect to any Enrolled Loan shall be 100 percent.

(b) Line of Credit. With respect to a Loan which may be made pursuant to a line of credit agreement, the Covered Loan Percentage shall be 100 percent, or the lesser amount pursuant to paragraph 6(g), regardless of whether the Lender has advanced at the time of enrollment the maximum amount of funds that may be advanced under the stated terms of the line of credit agreement. For purposes of this Agreement, fluctuations in the outstanding balance of a line of credit shall not be deemed to be the making or repayment of a new Loan.

(c) [RESERVED].

(d) Loans to Acquire Property of the Lender. The Covered Loan Percentage of a Loan any portion of the Net Proceeds of which are applied to acquire property of the Lender which qualifies as "Other Real Estate Owned", as such term is applicable to assets of banking institutions, shall be a maximum of 50 percent.

(e) Loans with Varying Covered Loan Percentages. If the Net Proceeds of a single Loan are to be applied in a manner which requires application of paragraphs 6(a) and/or 6(b) and paragraphs 6(c) and/or 6(d), and/or 6(g), then the Covered Loan Percentage for such a Loan shall be determined by weighting in accordance with the applicable percentages. For example, if a loan of $100,000 is applied to refinance a $75,000 Internal Restructure Loan with an existing 50% Covered Loan Percentage under the Program and to finance an additional $25,000 of other New Hampshire Business Activity covered by the general rules of paragraphs 6(a) and/or 6(b), then the Covered Loan Percentage with respect to such Loan shall equal 62.5 percent (i.e., (.50 x $75,000/$100,000) + (1.00 x $25,000/$100,000)).

(f) Extensions of Term Loans Which are Treated as New Loan. With respect to extensions of term Loans which are treated as new Loans pursuant to paragraph 5(d), the Covered Loan Percentage for the new Loan shall equal the Covered Loan Percentage applicable to the extended Loan.

(g) Reduction of Covered Amounts. Notwithstanding other provisions of this Agreement, and provided the Covered Loan Percentage complies with the limits in paragraph 6(d) when applicable, the Lender may at its own discretion elect at the time of enrollment a maximum amount of principal for which a Claim may be made that is less than the Gross Loan Amount. If the Lender realizes a loss with respect to such an Enrolled Loan, then the amount of the Lender's Claim shall not exceed the lesser of: (1) the amount of the Claim determined pursuant to paragraph 8(d); and (2) the maximum amount of principal specified pursuant to this paragraph 6(g), plus accrued interest attributable to the maximum amount of principal and reasonable out-of-pocket expenses incurred by the Lender in pursuing its collection efforts, including preservation of collateral. If the Lender elects a maximum amount of principal pursuant to this paragraph 6(g), the outstanding principal balance of such loan for purposes of paragraph 4(b)(i) shall equal the lesser of: (1) the maximum amount of

principal so elected; and (2) the actual outstanding principal balance of such Loan. Further, if a Lender specifies a maximum amount of principal pursuant to this paragraph 6(g), the Covered Loan Percentage of said loan shall equal the amount of the principal elected for enrollment in the Program divided by the Gross Loan Amount. In addition, if a Lender specifies a maximum amount of principal pursuant to this paragraph 6(g), then such amount shall be treated as the Gross Loan Amount for purposes of computing the CAP Reserve Payment.

7. **Establishment and Use of the CAP Reserve Fund**.

(a) Establishment of the CAP Reserve Fund. Upon execution of this Agreement, the BFA shall establish an administrative account on the books of the BFA in the name of the Lender for the purpose of accounting for all required payments to be made by the Lender and the Borrower, and transfers to be made by the BFA, pursuant to the terms of this paragraph 7. The account shall be called the "CAP Reserve Fund - (Name of Lender)."

(b) CAP Reserve Payments by Borrower and Lender. Subject to Paragraph 5(e), the CAP Reserve Payment made by the Borrower and the Lender with respect to any Loan shall be no greater than four percent, and no less than three percent, of the Covered Loan Percentage multiplied by the Gross Loan Amount as such payment share may be determined in negotiations between the Lender and the Borrower. The portions of the CAP Reserve Payment to be paid by the Lender and the Borrower with respect to any Loan shall be subject to negotiation between the Lender and the Borrower; provided, however, that the amount paid by the Lender shall not be less than 25 percent of the CAP Reserve Payment made with respect to the Loan. No CAP Reserve Payment shall be made on any portion of existing Lender debt already enrolled in the Program that is then enrolled in the Program as part of a new Loan made by Lender. The Lender shall deposit the CAP Reserve Payment with respect to any Loan in a depository account maintained at the Lender in the name of the BFA. Nothing in this Agreement shall prohibit the Lender from recovering its portion of the CAP Reserve Payment from a Borrower.

(c) CAP Security Payment by BFA. The CAP Security Payment made by the BFA with respect to any Loan shall equal 2.5 multiplied by the CAP Reserve Payment made for such Loan.

(d) [RESERVED].

(e) Notice of Depletion of Capacity and Assurance of Available Funds.

(i) Notice of Depletion of Capacity and Obligation to Make CAP Security Payments. If the BFA determines that the funds available to make CAP Security Payments have reached a level where there is a risk that such funds may be reduced to zero within the next six months based on historical experience with the Program, it shall issue a written Notice of Depletion to the Lender and all other lenders participating under the Program. With respect to any Loan enrolled on or after the date Lender receives such a Notice of Depletion, the BFA shall be obligated to make a CAP Security Payment with respect to an Enrolled Loan only if funds have been allocated by the BFA to the Program and such funds are available. With respect to any Loan enrolled prior to the date Lender receives such a Notice of Depletion, the BFA shall be obligated to make its CAP Security Payments in accordance with paragraph 7(c).

(ii) Reservation of Funds. After the Lender receives a Notice of Depletion, the Lender may obtain a reservation of funds to support a CAP Security Payment from the BFA in accordance with procedures specified by the BFA. Upon approval of such reservation, the BFA shall become bound to make the reserved CAP Security Payment if the Lender satisfies the requirements specified in paragraph 5(b).

(f) Ownership, Control and Investment of CAP Reserve Fund. All funds credited to the CAP Reserve Fund shall be the exclusive property of and solely controlled by the BFA. The BFA may not withdraw funds from the CAP Reserve Fund except as is specifically provided for in this Agreement. The BFA shall

have the right to invest all funds in the CAP Reserve Fund in any Permitted Investment; provided, however, that the BFA shall maintain cash in a depository account at the Lender in an amount not less than the Minimum Deposit Amount.

(g) Interest or Income Earned. Interest or income earned on the funds credited to the CAP Reserve Fund shall be deemed to be part of the CAP Reserve Fund. However, the BFA is authorized to withdraw at any time from the CAP Reserve Fund an amount equal to all of such interest or income that has been credited to the CAP Reserve Fund. Any withdrawal made pursuant to this paragraph may be made prior to paying any Claim under paragraph 9, and none of such amounts withdrawn shall ever be required to be transferred back to the CAP Reserve Fund.

(h) Reporting. If the BFA maintains any portion of the CAP Reserve Fund in a Permitted Investment with a person other than the Lender, then the BFA shall provide to the Lender monthly transaction reports indicating the balance in the CAP Reserve Fund, payments and transfers into the CAP Reserve Fund, withdrawals from the CAP Reserve Fund, and interest or income earned on funds credited to the CAP Reserve Fund. The records of the BFA with respect to all payments and transfers into the CAP Reserve Fund, withdrawals from the CAP Reserve Fund, and interest or income earned on the funds credited to the CAP Reserve Fund, shall be available to the Lender at the offices of the BFA during normal business hours.

8. **Claims by Lender Against the CAP Reserve Fund**. The Lender may file a Claim with the BFA for payment out of the CAP Reserve Fund in accordance with the provisions of this paragraph 8.

(a) Requirement of Charge Off of Loan. The Lender may file a Claim with respect to an Enrolled Loan only upon a charge off of all or a portion of the Enrolled Loan in accordance with the Lender's ordinary policies and procedures for charging off commercial Loans or as required by federal or state regulatory agencies.

(b) Delivery of Claim Form to BFA. Upon making the charge off required by paragraph 8(a), the Lender may file a Claim with the BFA by submitting a completed Claim Form in the form attached hereto as **Schedule 6**, bearing the execution signature of an authorized officer of the Lender. Any Claim that is filed hereunder shall be delivered to the BFA not later than 30 calendar days after the date the charge off in accordance by paragraph 8(a) occurs.

(c) Loan History Information. At the time of submitting a Claim, the Lender shall provide a certified history of disbursements, payments, accruals of interest and any other charges with respect to the Enrolled Loan for which the Claim is filed on a form to be provided by the BFA. The Lender shall provide the BFA with such further information concerning the Loan as may be reasonably requested by the BFA.

(d) Amount of Claim. Subject to the limitations set forth in this paragraph 8(d) and except as provided in paragraph 6(g), the amount of a Claim shall equal the product of (i) the Covered Loan Percentage and (ii) the sum of: (a) the amount of the Enrolled Loan which is charged off pursuant to the determination required by paragraph 8(a); (b) the outstanding amount of Accrued Interest owed to the Lender pursuant to the terms of the Enrolled Loan; and (c) an amount equal to any reasonable out-of-pocket expenses incurred by the Lender 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 a Claim with respect to an Enrolled Loan shall not exceed the principal amount of the Loan as stated in the Loan documents at the time of enrollment plus Accrued Interest. The amount of a Claim shall not include any amount attributable to (i) damages paid by the Lender as a result of a legal claim against Lender for Negligence, misconduct or otherwise, or (ii) unpaid late charges or unpaid penalty interest charges imposed by the Lender. For the avoidance of doubt, the following example illustrates the amount of a Claim covered: if Lender has a $500,000 loan and the BFA enrolled only $200,000 under the Program, then the Covered Loan Percentage is

40% (Covered Loan Amount/Gross Loan Amount or $200,000/$500,000), meaning the BFA would cover only 40% of the Claim.

(e) Bad Loans. A Lender may not under any circumstances file a Claim for an Enrolled Loan which suffered one or more events of payment default within 180 days of Enrollment of the Loan in the Program.

9. **Disbursement of Funds from CAP Reserve Fund**.

(a) Payment of Claim. Within 20 calendar days after receipt by the BFA of a Claim and loan history information filed by the Lender in accordance with paragraph 8, the BFA shall pay, from funds available in the CAP Reserve Fund, the amount of such Claim.

(b) Recovery of Paid Claims in General. The BFA retains the right to seek recovery from the Lender of any Claim paid to the Lender if the BFA determines with written notice to the Lender that any representation or warranty provided by the Lender with respect to an Enrolled Loan was known by the Lender, or should have been known by the Lender but for its gross negligence, to be false at the time the Loan was filed for enrollment. Upon making a preliminary determination that the BFA intends to dispute a Claim or Claims in accordance with this paragraph 9(b), the BFA shall issue a written notice of such intent to the Lender which shall state the basis for the intent to dispute a Claim. Upon receiving such a notice of intent, the Lender may object to such notice by delivering a written statement to the BFA explaining the basis for such objection within 10 days after receipt of the BFA's notice. The Board of Directors of the BFA shall determine in its sole discretion whether to dispute a Claim at a meeting duly noticed for such purpose. If the BFA is unable to resolve the dispute by other means, the BFA may elect to proceed either by bringing an action in a court of appropriate jurisdiction or by arbitration pursuant to the rules of the American Arbitration Association. The Lender hereby consents to proceeding by means of arbitration. Both parties agree to be bound by any decision issued pursuant to such arbitration.

(c) Limited Review of Claims Prior to Payment. After notice and during any period of time that the BFA disputes payment of a Claim or Claims in accordance with paragraph 9(b), the BFA shall have the right to review Claims submitted by the Lender prior to payment of such Claims in accordance with this paragraph 9(c). Prior to the expiration of the 20-day period specified in paragraph 9(a) with respect to a Claim, the BFA may issue a written notice of proposed rejection or adjustment of Claim to the Lender which shall state the basis for the proposed rejection or adjustment. Bases for rejection or adjustment of a Claim may be that any representation or warranty provided by the Lender with respect to an Enrolled Loan was known by the Lender, or should have been known by the Lender but for its gross negligence, to be false at the time the loan was filed for enrollment. Upon receiving a notice of rejection or adjustment, the Lender may object to such notice by delivering a written statement to the BFA explaining the basis for such objection within 10 days after receipt of the BFA's notice. The Board of Directors of the BFA shall determine in its sole discretion whether to reject or adjust such Claim at a meeting duly noticed for such purpose.

(d) Insufficient Funds. If there are insufficient funds in the CAP Reserve Fund to cover the entire amount of the Lender's Claim, the BFA shall pay to the Lender an amount equal to the current balance in the CAP Reserve Fund to satisfy the Claim on a partial basis. Subject to paragraph 9(e), such payment shall be deemed to satisfy fully any Claim, and the Lender shall have no other or further right to receive any amount from the CAP Reserve Fund or the BFA with respect to such Claim. If the Lender submits two or more Claims contemporaneously and there are insufficient funds in the CAP Reserve Fund to cover the entire amount of such Claims, the Lender may designate the order of priority in which the BFA shall pay such claims.

(e) Payment of Certain Unpaid Claims. If an Enrolled Loan was enrolled at any time when the sum of the Gross Loan Amounts of all Loans previously enrolled under this Agreement is less than $5,000,000, then the Lender shall have the following right to recover a Claim with respect to such an Enrolled Loan which

is not paid in full in accordance with paragraph 9(d). If, after depletion in accordance with paragraph 9(d), the CAP Reserve Fund is subsequently replenished and the balance thereof exceeds the remaining amount of such an unpaid Claim by 33.33 percent (or 100 percent in the case of such an unpaid Claim with respect to an Internal Restructure Loan), then on request of the Lender the BFA shall fully pay the remaining amount of such an unpaid Claim.

10. **Reports of Collection Status**. With respect to any Enrolled Loan for which a Claim has been paid, the Lender shall within 60 days from the date the Claim is paid, provide the BFA with a report outlining the Lender's proposed methods of pursuing its collection rights. Such report shall include an identification of the location and estimated value of any collateral which secures payment of the Enrolled Loan and proposed methods of pursuing rights against such collateral. Thereafter, the Lender shall, on a periodic basis, but not less than quarterly, file a report with the BFA summarizing any changes to the proposed program for collection and any new information concerning identity, location and value of collateral, and advising the BFA of the status of the collection efforts. At such time as the Lender has determined that collection activities are no longer economically feasible to pursue, it will so advise the BFA, and thereafter no further reports will be required.

11. **Recovery by Lender Subsequent to Claim**. If subsequent to payment of all or part of a Claim by the BFA, the Lender shall recover any amount with respect to which payment of the Claim was made, the Lender shall promptly pay to the BFA for deposit in the CAP Reserve Fund an amount equal to the Covered Loan Percentage multiplied by such amount recovered, less a proportionate share of any reasonable out-of-pocket expenses incurred. The Lender shall retain documentation in its files evidencing any such expenses.

12. **Subrogation Rights of the BFA**.

(a) In General. If the payment of a Claim pursuant to paragraph 9 has fully covered the Lender's loss on an Enrolled Loan, or if the payment of a Claim pursuant to paragraph 9, when combined with any other recovery with respect to such Loan, has fully covered the Lender's loss, the BFA, upon its request, shall be subrogated to the rights of the Lender with respect to any 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 BFA any right, title or interest to any collateral, security, or other right of recovery in connection with the Loan. The Lender shall provide the BFA with all reasonable assistance thereafter as the BFA 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 funds received by the BFA 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 BFA in the CAP Reserve Fund, less any reasonable out-of-pocket expenses incurred by the BFA in taking such enforcement actions and the amount of any payments made by the BFA pursuant to paragraph 12(b).

(b) Payment to Secure Subrogation Rights. If the BFA determines that it desires to exercise its right of subrogation in connection with an Enrolled Loan, and would be entitled to exercise such right except for the fact that the Lender's loss has not been fully covered, the BFA, at its option, may pay, from BFA funds other than those available in the CAP Reserve Fund, an amount sufficient to result in the Lender's loss being fully covered, notwithstanding the fact that such payment may cover a principal amount not covered under the Program or not included in the Lender's Claim. Upon making such payment pursuant to this subsection, the BFA shall be subrogated to the rights of the Lender in accordance with paragraph 12(a).

13. **Withdrawal of Excess Funds from CAP Reserve Account**.

(a) Quarterly Loan Status Report. If requested by the BFA, on or before the fifteenth day of February, May, August, and November of each year, the Lender shall file a report with the BFA indicating the number, aggregate outstanding balance, and Covered Loan Percentages of all Enrolled Loans as of the previous December 31 in the case of the report due on February 15, as of the previous March 31 in the case of the report

due on May 15, as of the previous June 30 in the case of the report due on August 15, and as of the previous September 30 in the case of the report due November 15.

(b) Right to Withdraw Excess Funds. If any loan status report indicates that for the immediately preceding 24-month period the balance in the CAP Reserve Fund continually exceeded the aggregate outstanding covered loan amounts of all Enrolled Loans at any time during such period, the BFA may withdraw from the CAP 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 CAP Reserve Fund balance exceeded the aggregate outstanding covered loan amounts of all Enrolled Loans as of the most recent report, unless the Lender has provided to the BFA adequate documentation that at some time during such 24-month period, the aggregate covered loan amount of all Enrolled Loans exceeded the balance then in the CAP Reserve Fund.

(c) Failure to File Reports. If the Lender fails to file a loan status report within thirty days of its original due date, the BFA shall be entitled to withdraw from the CAP Reserve Fund, based on the BFA's determination from an inspection of the Lender's files pursuant to paragraph 18, an amount not greater than the amount by which the CAP Reserve Fund balance exceeded the aggregate outstanding covered loan amount of all Enrolled Loans as of the date for which such report was required to be filed.

14. **Termination at BFA's Discretion**. Upon making a determination that the Lender has materially breached this Agreement or has abused the intent of the Program, the BFA, in its sole discretion, upon written notice to Lender specifying its reasons, may terminate its obligation under this Agreement to enroll Loans under the Program. Such termination shall be effective on the date specified in the notice of termination, except that such termination shall not apply to any Loan which is made, or with respect to which a written loan commitment has been executed by both the Lender and the Borrower, on or before the date on which the notice of termination is received by the Lender. The BFA may terminate its obligation to enroll Loans under this Agreement in its sole discretion without any determination relating to the Lender's performance if the BFA is terminating the enrollment of Loans not merely for the Lender but instead for all participating lenders under the Program. In such event, the BFA shall provide written notice of at least 90 days to the Lender. Any termination under this paragraph 14 shall be prospective only and shall not apply to any Loans previously enrolled under the Program. Subsequent to a termination of the BFA's obligation to enroll Loans under the Program pursuant to this paragraph 14, when the balance of the CAP Reserve Fund is reduced to zero, either through payments of Claims with respect to remaining Enrolled Loans or through withdrawals of funds by the BFA pursuant to paragraph 13 and all obligations and opportunities to collect on Enrolled Loans have expired or lapsed, this Agreement shall automatically terminate.

15. **Special Termination of This Agreement in Event of Substantial Threat to Public Purpose**.

(a) BFA's Special Termination Right. To the extent permitted by law, the BFA may, in its sole discretion, terminate this Agreement by written notice if the BFA determines that the fundamental public purpose of the Program and the CAP Reserve Fund to support continuing financing of New Hampshire Business Activities is substantially threatened because the Lender's capital fails to comply with minimum federal and state regulatory requirements, and no reasonable prospect for the replenishment of such capital exists.

(b) Other Protections of Public Purpose. In the event that the BFA makes the determination described in paragraph 15(a) but is prevented for any reason from exercising its special right to terminate this Agreement, then notwithstanding any other provision of this Agreement, the BFA shall have the following special rights to protect the public purposes of the CAP Reserve Fund and the Program:

(i) The BFA shall have the right to review all Claims submitted by the Lender (or its appointed conservator, receiver or legal custodian) prior to payment of such claims in accordance with this paragraph 15(b)(i). Within 180 days after the BFA receives such a Claim, the BFA may issue a written notice of proposed rejection or adjustment of Claim to the Lender (or its appointed conservator, receiver or legal custodian) which

shall state the basis for proposed rejection or adjustment. Basis for rejection or adjustment of a Claim may be that any representation or warranty provided by the Lender with respect to an Enrolled Loan was known by the Lender, or should have been known by the Lender but for its gross negligence, to be false at the time the loan was filed for enrollment. Upon receiving a notice of rejection or adjustment, the Lender (or its appointed conservator, receiver or legal custodian) may object to such notice by delivering a written statement to the BFA explaining the basis for such objection within 60 days after receipt of the BFA's notice. The Board of Directors of the BFA shall determine in its sole discretion whether to reject or adjust such Claim at a meeting duly noticed for such purpose.

(ii) To the extent permitted by law, the BFA shall have the option, which it may exercise in its sole discretion, to acquire, and the Lender (or its appointed conservator, receiver or other legal custodian) agrees to sell any right, title or interest in any or all Enrolled Loans and in any collateral, security or other right of recovery in connection with such acquired Enrolled Loans. The price to be paid by the BFA if it exercises such special option shall equal the market value of such Loans as determined by the parties, but shall not exceed the sum of the outstanding principal balance and accrued but unpaid interest of each Enrolled Loan with respect to which such option is exercised. If the parties are unable to agree on the market value of such Loans, such value may be established pursuant to the rules of the American Arbitration Association upon the election of either party.

16. **Pledge of Funds in the CAP Reserve Fund**. The BFA pledges the funds in the CAP Reserve Fund to be available to pay Claims pursuant to paragraph 9. The BFA further pledges that the Lender shall have a first priority security interest in such funds to secure payment of Claims pursuant to paragraph 9, and that the BFA will not encumber or pledge the funds to any other party. Nothing contained herein is intended to diminish the ownership, investment or control of the CAP Reserve Fund granted to the BFA pursuant to paragraph 7, and further nothing contained herein shall affect the rights of the BFA to withdraw funds from the CAP Reserve Fund pursuant to paragraphs 7(g) or 13.

17. **Amendments to the Agreement**. The BFA may, with at least 45 days written notice to the Lender, amend 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 as of the effective date of the amendment with respect to funds in the CAP Reserve Fund.

17a. **Covenants of the Lender**.

(a) **Affirmative Covenants**. The Lender will, unless the BFA shall otherwise consent in writing:

(i) Preservation of Existence. Preserve and maintain its corporate existence.

(ii) Compliance with Laws, Etc. Comply in all material respects with the requirements of applicable laws, rules, regulations and orders of any governmental authority, including without limitations, any such laws, rules, regulations and orders relating to banks and banking companies.

(iii) Keeping of Books. Keep proper records and books of account in which full and correct entries shall be made of all activity relating to each Enrolled Loan, in accordance with good accounting practices consistently applied.

(iv) Notification of Default. Notify the BFA promptly of any default or event of default under the terms of any Enrolled Loan or any other agreement between the Lender and a Borrower, or as soon as practicable upon realization by the Lender of an anticipated default or event of default by a Borrower under the terms of any Enrolled Loan or any other agreement between the Lender and a Borrower.

(v) Servicing. Service each Enrolled Loan in accordance with the Lender's standard policies and procedures, and in accordance with the standard of loan servicing employed by the Lender for its commercial loan portfolio generally.

(vi) Pursuit of Payment. Proceed diligently to collect all payments due under each Enrolled Loan as and when the same shall become due and payable and promptly discharge all the obligations of the Lender under each Enrolled Loan.

(b) **No Preferential Security**. The Lender will not, without the prior written consent of the BFA, acquire or maintain any preferential security, surety or insurance to protect a loan made to a Borrower during the period that an Enrolled Loan to such Borrower remains outstanding.

18. **Inspection of Files**. Upon notice to the Lender, the BFA may inspect the files of the Lender relating to any Enrolled Loans during normal business hours of the Lender. The BFA agrees that it will not copy or extract any information from such files unless (i) the information is protected from disclosure pursuant to RSA Chapter 91-A (the "Right to Know Law"), in which case the BFA agrees to invoke the confidentiality provisions of the Right to Know Law, (ii) if such information cannot be protected, the consent of the Borrower has been obtained, or (iii) the information is within the public domain. In addition, in the absence of the consent of the Borrower to do otherwise, the BFA shall maintain the confidentiality of information obtained from such files which is not already within the public domain, irrespective of whether such information has been copied or extracted; provided, however, that nothing contained herein shall prevent the BFA from releasing or producing information pursuant to a lawful order of a regulatory or judicial body. Notwithstanding the foregoing, this paragraph 18 is not intended to limit or preclude the ability of the BFA to exercise its right of subrogation or to withdraw funds from the CAP Reserve Fund or to defend itself in any legal action commenced against the BFA.

19. **Lender's Waiver of Set-Off Rights**. Notwithstanding any express or implied right of set-off provided to the Lender by any depository agreement or any other agreement, the Lender hereby waives any and all right to set-off, by reason of any claim against the BFA whether arising under this Agreement or otherwise, against any funds held in the CAP Reserve Fund.

20. **Lender's Waiver and Indemnification**. The Lender hereby waives any and all claims, including claims of contribution and indemnity, against the BFA arising from (i) the making, servicing and collection of any Loan made by the Lender, and (ii) the BFA's ownership, investment, administration or control of the funds deposited in the CAP Reserve Fund. The Lender shall defend, indemnify and hold harmless the BFA, its officers and employees, from and against any and all losses suffered by the BFA, its officers and employees, and any and all claims, liabilities or penalties asserted against the BFA, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Lender. Provided, however, that the foregoing waiver and indemnification provisions shall not apply to any loss, cost or damage incurred by the BFA as a result of the BFA's collection activities undertaken pursuant to the BFA's rights under paragraph 12.

21. **Miscellaneous**.

(a) Information. The Lender shall provide the BFA with such information regarding its participation in the Program as the BFA may reasonably require. The BFA shall deliver to Borrower a copy of the Privacy Notice and Privacy Act Statement (**Schedule 7**) at the time a Loan is enrolled in the Program.

(b) Compliance with Applicable Law. The Lender shall comply with all applicable federal and state laws, statutes, rules and regulations in the making, servicing and collection of any Loan.

(c) Limitation of Rights. This Agreement shall be for the exclusive benefit of the Lender and the BFA 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 the Agreement.

(d) Severability. If any clause or provision of this Agreement is held illegal or invalid by any court, the invalidity of such clause or provision shall not affect any of the remaining clauses or provisions hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause or provision had not been contained herein.

(e) Notices. All notices, certificates, requests 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:

If to the BFA:
New Hampshire Business Finance Authority
135 North State Street
Concord, New Hampshire 03301
Attention: Capital Access Program

If to the Lender:
_____
_____
_____
_____

(f) Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

(g) Assignment. The Lender may not assign or transfer any interest in this Agreement without the prior written consent of the BFA.

(h) Reports of Regulatory Agencies. The Lender hereby consents to the transmittal to the BFA, by any financial institution's regulatory agency of the federal or state governments, any information directly relating to the Lender's participation in the Program. The BFA shall hold any information acquired pursuant to this paragraph 21(h) strictly confidential.

(i) No Personal Liability. No member, officer or employee of the BFA, 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.

(j) Collateral. Except upon the exercise of the BFA's right of subrogation as set forth in paragraph 12, the BFA shall have no legal or equitable interest in any collateral, security, or other right of recovery in connection with any Enrolled Loan, and therefore the BFA's consent is not necessary for any amendment to the Lender's loan documents. This paragraph 21(j) shall not be construed to modify any obligation of the Lender to make payments to the CAP Reserve Fund pursuant to paragraph 7(b).

(k) Diligence. Within the context of the objectives of the Program, the Lender agrees to exercise reasonable prudence, care and diligence in the making, servicing and collection of Loans under the Program.

(l) Administration and Operation. The BFA may from time to time provide Lender with statements explaining administration and operation of this Agreement.

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

(n) Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Hampshire (without regard to the conflicts of law rules thereof).

(o) Waiver of Terms. The BFA or its designated officer may waive any provision of this Agreement, except as otherwise required by law, provided that the BFA or its designated officer finds that such waiver is in the public interest and unusual circumstances warrant departure from such provision of this Agreement.

BUSINESS FINANCE AUTHORITY OF
THE STATE OF NEW HAMPSHIRE

By:_____
Name:
Title:

LENDER

By:_____
Name:
Title

Approved by Attorney General (Form, Substance and Execution):

OFFICE OF ATTORNEY GENERAL

By:_____
Name:
Title:

LIST OF SCHEDULES

Schedule 1 CAP Notice and Waiver Form

Schedule 2 New Loan: CAP Loan Filing Form

Schedule 3 Existing CAP Loan: Refinance, Re-advance or Line of Credit Increase

Schedule 4 Claim Form

Schedule 1
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: _____

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

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.

1. Ethnicity:

☐ Hispanic or Latino/a ☐ Not Hispanic or Latino/a
☐ Prefer not to respond

2. Race (select all that apply):

☐ American Indian or Alaska Native
☐ Indian
☐ Filipino
☐ Korean
☐ Asian (Other)
☐ Native Hawaiian or Other Pacific Islander
☐ Native Hawaiian
☐ Pacific Islander (Other)
☐ Prefer not to respond
☐ Asian
☐ Chinese
☐ Japanese
☐ Vietnamese
☐ Black or African American
☐ Guamanian or Chamorro
☐ Samoan
☐ White

3. Middle Eastern or North African Ancestry

☐ Middle Eastern or North African ☐ Not Middle Eastern or North African

☐ Prefer not to respond

4. Gender

☐ Female ☐ Male

☐ Nonbinary ☐ Prefer to self-describe: _____

☐ Prefer not to respond

6. Veteran Status

☐ Veteran ☐ Non-veteran

☐ Prefer not to respond

_____ _____

Borrower Signature Date

_____ _____

Borrower Signature Date

_____ _____

Borrower Signature Date

_____ _____

Borrower Signature Date

Schedule 2

New Loan: Capital Access Program (CAP) Loan Filing Form

Lender Information:

Lender Institution: _____
Loan #: _____

CAP Program Information:

1. Loan Type: *Line of Credit -* O *Term Loan -* O
2. Loan Term: *Years -* _____ *Execution Date -* _____
3. Business/Borrower Information:
   a. Borrower Legal Name: _____
   b. Address: _____
   _____
   _____
   c. County: _____
   d. NAICS Code/Industry: _____
   e. Year Business Started: _____
   f. Gross Revenues (last fiscal year): _____
4. Loan Proceeds:
   a. Gross Principal Amount: _____
   b. Amount Eligible for Coverage: _____
   c. Amount to be Covered: _____
5. Computation of CAP Fees:
   a. Total Lender/Borrower Percentage *(between 3% or 4%)*: _____
   b. Amount of Loan to be Covered *(equal to 4c)*: _____
   c. Total Reserve Fund Payment *(5a*5b)*: _____
   d. Lender Portion *(25% of 5c, can be charged to borrower)*: _____
   e. Borrower Portion*(5c-5d)*: _____
   f. BFA Matching Deposit (5c*2.5): _____
6. Employment Information:
   a. Current Number of NH Employees: *Full Time -* ___ *Part Time -* ___
   b. Estimate of Jobs Maintained: *Full Time -* ___ *Part Time -* ___
   c. Estimate of Jobs Created: *Full Time -* ___ *Part Time -* ___

7. Additional Amount (if any) Contemporaneously Loaned to Borrower: _____

By executing this Loan Filing Form and submitting this Loan for enrollment, the Lender hereby makes the representations and warranties required to be made under Paragraph 4 of the Lender Participation Agreement, including, and not limited to the following:

(i) The Lender has not made the Eligible Loan in order to place, under the protection provided by the Program, prior debt that is not covered under the Program and that is or was owed by the borrower to the Lender or to an Affiliate of the Lender.

(ii) The Lender has not made the Eligible Loan as a refinancing of a loan (other than an existing Enrolled Loan) previously made to the Borrower by the Lender or an Affiliate of the Lender.

(iii) The Lender is not attempting to enroll the unguaranteed portions of SBA guaranteed loans.

(iv) The Lender has disclosed to the Borrower information concerning the Program as set forth on the Notice to Borrower.

(v) No Principal of the Lender 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 s 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.

(vi) The Lender is in compliance with the requirements of 31 C.F.R. § 1020.220, customer identification requirements for banks.

Lender Institution: _____

Signature: _____
Name: _____
Title: _____
Date: _____

***** Business Finance Authority Use Only *****

CAP Loan Number: _____ Reviewed by: _____
Date received by BFA: _____ Deposit Evidence: Yes - O No - O

Signature: _____
Name: _____
Title: _____
Date: _____

Schedule 3
Existing CAP Loan: Refinance, Re-advance or Line of Credit Increase

Lender Information:

Lender Institution: _____
Loan #: _____

CAP Program Information:

1. Loan Type: *Line of Credit -* O *Term Loan -* O
2. Loan Term: *Years -* _____ *Execution Date -* _____

3. Business/Borrower Information:
   a. Borrower Legal Name: _____
   b. Address: _____
   _____
   _____
   c. County: _____
   d. NAICS Code/Industry: _____
   e. Year Business Started: _____
   f. Gross Revenues (last fiscal year): _____

4. New Loan Information:

   a. Total Gross Principal Amount: _____
   b. Amount Eligible for Coverage: _____
   c. Amount to be Covered: _____

5. Existing CAP Loan Information:

   a. If a Term Loan, Covered Loan Amount at the Time of Original Enrollment: _____
   b. If a Term Loan, Balance Immediately Prior to Proposed Refinancing: _____
   c. If a Line of Credit, Original Amount Covered: _____

6. Total Coverage Increase: _____
   (If the loan type is term loan, 4c-5b. If the loan type is a line of credit, 4c-5c.)

7. Computation of Fees:

   a. Total Lender/Borrower Percentage *(between 3% or 4%)*: _____
   b. Amount of NEW Loan Proceeds to be Covered *(equal to 5d)*: _____
   c. Total Reserve Fund Payment *(6a*6b)*: _____
   d. Lender Portion *(25% of 6c, can be charged to borrower)*: _____
   e. Borrower Portion *(6c-6d)*: _____
   f. BFA Matching Deposit (6c*2.5): _____

Additional Amount (if any) Contemporaneously Loaned to Borrower: _____

8. Employment Information

   a. Current Number of NH Employees: *Full Time* - ___ *Part Time* - ___
   b. Estimate of Jobs Maintained: *Full Time* - ___ *Part Time* - ___
   c. Estimate of Jobs Created: *Full Time* - ___ *Part Time* - ___

By executing this Loan Filing Form and submitting this Loan for enrollment, the Lender hereby makes the representations and warranties required to be made under Paragraph 4 of the Lender Participation Agreement, including, and not limited to the following:

(vii) The Lender has not made the Eligible Loan in order to place, under the protection provided by the Program, prior debt that is not covered under the Program and that is or was owed by the borrower to the Lender or to an Affiliate of the Lender.

(viii) The Lender has not made the Eligible Loan as a refinancing of a loan (other than an existing Enrolled Loan) previously made to the Borrower by the Lender or an Affiliate of the Lender.

(ix) The Lender is not attempting to enroll the unguaranteed portions of SBA guaranteed loans.

(x) The Lender has disclosed to the Borrower information concerning the Program as set forth on the Notice to Borrower.

(xi) No Principal of the Lender 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 s 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.

(xii) The Lender is in compliance with the requirements of 31 C.F.R. § 1020.220, customer identification requirements for banks.

Lender Institution: _____

Signature: _____
Name: _____
Title: _____
Date: _____

***** Business Finance Authority Use Only *****

CAP Loan Number: _____ Reviewed by: _____
Date received by BFA: _____ Deposit Evidence: Yes - O No - O

Signature: _____
Name: _____
Title: _____
Date: _____

Schedule 4
Claim Form

Capital Access Program: _____
BFA Identification: _____

Claim Form
(LFF refers to Loan Filing Form)

1. Loan Identification Number (from LFF): _____

2. Charge-Off Information:
   a. Date of Charge-Off of Loan: _____
   b. Principal Portion Charged-Off: _____
   c. Accrued Interest Charged-Off (excluding penalty or default interest): _____
   d. Reasonable Out-of-Pocket Costs Charged-Off: _____
   e. Total Amount of Charge-Off (2b+2c+2d): _____

3. Computation of Amount of Claim:
   a. Covered Loan Percentage (LFF 4c/4a): _____
   b. Total Amount of Charge-Off (2e): _____
   c. Tentative Claim Amount (3a*3b): _____
   d. Maximum Amount of Principal (if applicable, LFF 4C): _____
   e. Final amount of Claim (lesser 3c or 3d): _____

Attached to this claim is a history of disbursement and servicing of the Loan that is the subject of this claim, and all computations above reconcile with such history. The undersigned hereby certifies that the Loan that is the subject of this claim has been charged-off against loan loss reserves of the Lender, and that all provisions of the Lender Participation Agreement have been complied with.

LENDER: _____
Date: _____
By: _____
Name: _____
Title: _____

* * Business Finance Authority Use Only * *

Reviewed by: _____
Date Received by Authority: _____
Date Claim Paid: _____

Date: _____
Signed: _____