

**RURAL ECONOMIC DEVELOPMENT CENTER, INC.
NORTH CAROLINA CAPITAL ACCESS PROGRAM
LENDER PARTICIPATION AGREEMENT**

THIS LENDER PARTICIPATION AGREEMENT (the "Agreement") is entered into as of this ____ day of ____, 20 ____ by and between the **Rural Economic Development Center, Inc.**, a non-profit corporation, whose address is 4021 Carya Drive, Raleigh, North Carolina 27610 (the "Center"), and ____ which is a financial institution, as defined by the 2010 Small Business Jobs Act, Title III – State Small Business Credit Initiative, Section 3002 (5) as ratified by the United States Congress, whose address is ____ (together with its successors and assigns, the "Lender").

RECITALS

WHEREAS, the State of North Carolina has created the North Carolina Capital Access Program (the "Program") under authority granted by Section 28.1 Chapter 769 of the 1993 Session Laws as ratified by the North Carolina General Assembly (the "Act"), to provide loan insurance to increase capital to businesses, particularly small and medium-sized businesses, to foster economic development in North Carolina;

WHEREAS, Section 28.1 Chapter 769 of the 1993 Session Laws as ratified by the North Carolina General Assembly has designated the Center to administer the Program, enter into any contracts necessary to carry out the Program, and take any action reasonably necessary to ensure compliance with the Program;

WHEREAS, the Center and the Lender desire to set forth the terms and conditions of the loan insurance that will apply if the Lender decides to make loans under the Program; and

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, each of the following words and terms used in this Agreement shall have the following meaning unless the context or use indicates a different meaning. Definitions shall be applicable to both the singular and plural forms of the terms as the content may require:

"Affiliate" when describing a relationship with the Lender, means any one or more bank subsidiaries (other than the Lender) of the Lender's parent corporation and its successors.

"Borrower" means the recipient of a loan which is, has been, or will be filed by the Lender for enrollment under the Program, and all successors and assigns of the Borrower.

"Claim" means any claim filed by the Lender pursuant to Section 5.3 of this Agreement.

"Eligible Loan" means a loan made by the Lender to a Borrower for which the representations and warranties are made by the Lender pursuant to Section 2.2 of this Agreement.

“Enrolled Loan” means a loan enrolled by the Center under the terms of Section 4 of this Agreement. The amount of an enrolled loan may be less than, but not to exceed the total amount of the loan.

“Lender” means the insured depository institution, insured credit union, or community development financial institution (CDFI), as defined by the Small Business Jobs Act, Title III – State Small Business Credit Initiative, Section 3002 (5).

“Line of Credit” means a line of credit extended by the Lender to the Borrower.

“Maximum Enrolled Loan Amount” means the maximum aggregate outstanding amount of \$5,000,000 for any Enrolled Loan or Loans to a single Borrower or any common enterprise in which the Borrower has an ownership interest.

“Passive Real Estate Ownership” means ownership of real estate for the purpose of deriving income from speculation, trade, or rentals, except that the term does not include: the ownership of that part of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or the ownership of real estate for the purpose of construction or renovation until the completion of the construction or renovation phase.

“Program” means the North Carolina Capital Access Program, as provided in Section 28.1 Chapter 769 of the 1993 Session Laws as ratified by the North Carolina General Assembly.

“Reserve Fund” means an interest bearing account established by the Center with the Lender to hold funds accumulated pursuant to this Agreement to cover Claims made by the Lender under Section 5.3 of this Agreement.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the Center. With respect to any loan enrolled under this Agreement, the Center makes the following representations and warranties as of the time of the each enrollment:

- (a) The Center has the necessary power under the Act, and has duly taken all action on its part required by the Act to authorize, execute, and deliver this Agreement;
- (b) This Agreement when executed will be valid, binding, and enforceable in accordance with its terms;
- (c) The execution and performance of this Agreement by the Center will not violate or conflict with any instrument by which the Center is bound; and
- (d) The funding for the Program has been received by the Center from sources including the State Small Business Credit Initiative (SSBCI) through the Small Business Jobs Act of 2010.

Section 2.2. Representations by the Lender. With respect to any loan that the Lender files for enrollment under this Agreement:

- (a) The Lender represents and warrants:
 - (1) The loan has not been made in order to place under the protection of 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.

- (2) The loan is not a refinancing of a loan previously made to that Borrower by the Lender or an affiliate of the Lender.
- (3) That the Lender has received from the Borrower a written representation, warranty, pledge and waiver in the form as set forth in Exhibit 1 stating that Borrower has no legal, beneficial or equitable interest in the non-refundable premium charges or any other funds credited to the Reserve Fund established to cover losses sustained by the Lender on Enrolled Loans;
- (4) That the Lender has disclosed to the Borrower information concerning the Program as set forth on Exhibit 2, or such modified exhibit as may be specified by the Center;
- (5) That the Lender is in material compliance with all applicable federal and state laws and rules;
- (6) That the enrollment of the loan by the Bank will not violate the Maximum Enrolled Loan Amount.
- (7) That the Lender or an affiliate of the Lender will not enroll the unguaranteed portion of any SBA or other federally guaranteed loan into the Program.

(b) The Lender will obtain an assurance from the Borrower affirming:

- (1) The Borrower is an entity with 500 or fewer employees;
- (2) The loan proceeds must be used for a “business purpose.” A business purpose includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, 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.

Permissible Borrowers include corporations, partnerships, joint ventures, sole proprietorships, state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a “business purpose” as defined above.

- (3) The loan proceeds will not be used to:
 - i. repay a delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority; or
 - ii. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or
 - iii. reimburse funds owed to any owner, including any equity injection or injection of capital for the business’ continuance; or
 - iv. purchase any portion of the ownership interest of any owner of the business.
- (4) The Borrower is not:
 - i. an executive officer, director, or principal shareholder of the Lender; or
 - ii. a member of the immediate family of an executive officer, director, or principal shareholder of the Lenders; or

- iii. a related interest of such executive officer, director, principal shareholder, or member of the immediate family.

For the purposes of these three Borrower restrictions, the terms “executive officer”, “director”, “principal shareholder”, “immediate family”, and “related interest” refer to the same relationship to a Lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(5) The Borrower is not:

- i. 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 business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or
- ii. 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 certified as a Community Development Financial Institution; or
- iii. 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; or
- iv. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is 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
- v. a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

- (6) No principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, “principal” is defined as “if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a 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.”

ARTICLE III

ESTABLISHMENT OF THE RESERVE FUND

Upon execution of this Agreement, the Center shall establish a Reserve Fund account in the name of the Center for the purpose of receiving all required premium charges to be paid by the Lender and each Borrower, and transfers made by the Center, pursuant to Section 5.1.

ARTICLE IV

ENROLLMENT OF LOANS IN THE PROGRAM

Section 4.1. A loan to be filed for enrollment under this Agreement is to enhance financing availability for small businesses in North Carolina for the purposes of economic development. The loan shall be made to fulfill the intent of the program and may be made with the interest rate, fees, and other terms and conditions as the Lender and Borrower may agree. The loan may be in the form of a line of credit, in which case the amount of the loan shall be considered to be the maximum amount that can be drawn down against the line of credit.

Section 4.2. Enrolling a Loan. In order to enroll a loan under the Program, the Lender shall file the loan for enrollment by delivering to the Center the following:

- (a) A copy of Exhibit 3 in completed form, or such modified exhibit as may be specified by the Center, bearing an execution signature of an authorized officer of the Lender; and
- (b) Transmittal of the non-refundable premium charges payable as set forth in Section 5.1 in connection with the loan by the Lender and the Borrower, or evidence that such transmittal has occurred, in accordance with procedures specified by the Center.

The Lender shall file the loan for enrollment within ten (10) days after the Lender makes the loan. For the purposes of this Agreement, the date on which the Lender makes a loan shall be deemed to be the date on which the Lender first disburses proceeds of the loan to the Borrower, or such earlier date on which the loan documents have been executed and the Lender has obligated itself to disburse proceeds of the loan. For the purposes of this Agreement, the filing of a loan for enrollment shall be deemed to occur on the date of which the Lender delivers to the Center, delivers to a professional courier service for delivery to the Center, mails to the Center, faxes to the Center, emails scanned image to the Center, or other method mutually approved by the Center and Lender, the documentation required by this Section.

Section 4.3. Center Acknowledgement. Upon receipt by the Center of the documentation identified in Section 4.2, the Center shall enroll the loan unless the information provided indicates that the loan is not an Eligible Loan, and shall mail or otherwise deliver to the Lender, within ten (10) business days of such receipt, an acknowledgement of enrollment, bearing the execution signature of an authorized representative of the Center, including documentation of the amount being transferred by the Center into the Reserve Fund pursuant to Section 5.1.

Section 4.4. Amount Covered. When filing a loan for enrollment, the Lender may specify an amount to be covered under the Program that is less than the total amount of the loan. Unless the context clearly requires otherwise, when used in this Agreement in connection with a loan or loans, the words “amount” and “proceeds” shall refer only to the amount covered under this Agreement.

Section 4.5. Refinancing Loans. If the Lender makes a loan to a Borrower which loan is a refinancing of a loan previously made to the Borrower by the Lender or an Affiliate of the Lender, where such prior loan was not enrolled under the Program, and if additional or new financing is extended by the Lender as part of the refinancing, the Lender may file the loan for enrollment pursuant to Section 4.2, with the amount of the loan to be covered under the Program only up to the amount of additional or new funding.

Section 4.6. Refinancing Enrolled Loans.

- (a) In the event that an Enrolled Loan is refinanced and the total amount to be covered under the Program does not exceed the covered amount of the loan as previously enrolled, the loan, as refinanced, may continue as an Enrolled Loan and there shall be no additional premium charges payable or Center transfer into the Reserve Fund.
- (b) If the refinancing of a loan under this Section results in the outstanding balance of an Enrolled Loan being increased, the Lender at the time of the refinancing shall be deemed to have made, with respect to such refinanced loan, the representations and warranties specified for the Lender in Section 2.2 (a).

Section 4.7. Enrolling Increased Amounts. In the event that an Enrolled Loan is refinanced in an amount which exceeds the amount of the loan as previously enrolled, and if the Lender wishes the amount of the refinanced loan to exceed the amount previously enrolled, the Lender shall file again the loan for enrollment pursuant to Section 4.2 with payments and transfers to be made into the Reserve Fund based on the amount to be covered which is in excess of the previous covered amount.

Section 4.8. Lines of Credit Balances. For the purposes of this Agreement, fluctuations in the outstanding balance of a line of credit, without increasing the covered amount under the Program, shall not be deemed to be a refinancing of the loan.

Section 4.9. Enrolled Term Loans. The Bank may have a longer note maturity and amortization period, but the maximum period a term loan is covered under the Program is ten (10) years from the date of enrollment, and the maximum period a line of credit is covered is seven (7) years from the time of enrollment. In any event, maturities should match the Borrower's ability to repay, and the life of the asset purchased.

Section 4.10. Termination as an Enrolled Loan. If the outstanding balance of an Enrolled Loan that is not a line of credit is reduced to zero, that loan shall no longer be considered an Enrolled Loan. If an Enrolled Loan which is a line of credit has an outstanding balance of zero for a twelve (12) month period, it shall no longer be considered an Enrolled Loan, unless before the expiration of the twelve (12) month period the Lender has reaffirmed in writing to the Borrower that the line of credit will remain open and the Borrower has acknowledged that reaffirmation in writing.

Section 4.11. Amounts Recovered in Bankruptcy. Any amount recovered from a Lender by a trustee in bankruptcy (or a similar representative of creditors) as a preference under 11 U.S.C. 547 remains an Enrolled Loan for the purpose of filing a claim against the Reserve Fund account.

ARTICLE V

USE OF THE RESERVE FUND

Section 5.1. Payments and Transfers to the Reserve Fund. The Lender shall set the premium charges payable to the Reserve Fund by the Lender and the Borrower in connection with a loan being filed for enrollment with the Center pursuant to Section 4.2. The total amount paid by the Borrower and Lender shall not be less than 2% of the enrolled amount of the loan, and shall not be greater than 7% of the enrolled amount of the loan. The Lender must pay into the Reserve Fund an amount at its discretion, which may be recovered from the Borrower. When enrolling a loan under Article IV, the Center shall transfer into the Reserve Fund, solely from available funds that have been allocated to the Program, a matching amount equal to the premium charges paid to the Reserve Fund account by the Borrower and Lender.

In connection with a loan that the Lender anticipates will become an Enrolled Loan, if the Lender wishes to assure itself that allocated funds are available to enable the Center to make a

Transfer of Fees upon enrollment, the Lender may obtain a reservation from the Center of the appropriate amount, in accordance with procedures specified by the Center. The reservation may be obtained before or after the Lender enters into the contract for the loan, and shall be binding on the Center if the Center receives the documentation identified in Section 4.2 of this Agreement with respect to such loan within thirty (30) Business Days after the date of the reservation, provided that the Lender complies with all the requirements of Section 4.2.

Section 5.2. Ownership, Control and Investments of Reserve Fund. All funds credited to the Reserve Fund shall be the exclusive property of, and solely controlled by, the Center. The Center may not withdraw funds from the Reserve Fund except as is provided for in this Agreement.

Interest or income earned on the funds credited to the Reserve Fund shall be deemed to be part of the Reserve Fund. The Center is authorized to withdraw at any time from the Reserve Fund fifty (50%) percent of all interest or income that has been credited to the Reserve Fund, except that after the first such withdrawal the Center may not withdraw more than fifty (50%) percent of all interest or income that has been credited to the Reserve Fund since the time of the last such withdrawal. These withdrawals need not be returned to the Reserve Fund. Interest withdrawals may be used for any purpose in connection with the Program

Section 5.3. Claims by Lender to Reserve Fund. If the Lender charges off all or part of an Enrolled Loan, the Lender may file a Claim with the Center by submitting a completed claim form attached as Exhibit 4, or as otherwise approved by the Center, bearing the execution signature of an authorized officer of the Lender. Any Claim that is filed under this Agreement shall be filed contemporaneously with the action of the Lender to charge off all or part of the loan.

Lender's Claim may include the amount of principal charged off plus up to ninety days' accrued interest, and up to one half (1/2) of the reasonable documented out-of-pocket expenses incurred in pursuing collection efforts, including the preservation of collateral. The amount of principal and accrued interest included in the Claim shall not exceed the principal amount covered under the Program upon enrollment, plus up to ninety days' accrued interest attributable to such covered principal amount.

The Lender may file more than one Claim in connection with a loan if the original Claim represented a partial charge-off of the loan or if the Lender incurs expenses in connection with a loan subsequent to the filing of a prior claim on that loan.

The Lender shall determine when and how much to charge off on an Enrolled Loan in a manner consistent with its normal method for making such determinations on business loans which are not Enrolled Loans.

If the Lender files two (2) or more Claims contemporaneously, and if there are insufficient funds in the Reserve Fund at that time to cover the entire amounts of those Claims, the Lender may designate the order of priority in which the Center shall pay the claims in accordance with Section 5.4.

Section 5.4. Disbursement of Reserve Fund.

- (a) Notwithstanding the violation of any other provision of this Agreement by the Lender, upon receipt by the Center of a Claim filed by the Lender in accordance with Section 5.3, the Center shall promptly pay, solely from funds in the Reserve Fund, the Claim as submitted, except that the Center may reject a Claim when the representations and warranties provided by the Lender in Section 2.2 were known by the Lender to be false when the loan was enrolled.
- (b) If there are insufficient funds in the Reserve Fund to cover the entire amount of the Lender's Claim, the Center shall pay to the Lender an amount equal to the current balance

in the Reserve Fund. Upon receipt of a completed Capital Access Special Claim Form attached as Exhibit 5, or a modified form as specified by the Center, the Center shall, out of any future funds that are transferred into the Reserve Fund account on subsequently Enrolled Loans, pay the remaining balance of the Claim upon a finding that the partial payment has not satisfied the Claim, and that the remaining balance is not greater than seventy-five percent (75%) of the balance in the Reserve Fund account at the time the Center receives the Special Claim Form.

Section 5.5. Recovery by Lender Subsequent to Claim. If after payment of a Claim by the Center, the Lender recovers from a Borrower any amount for which payment of the Claim was made, the Lender shall promptly pay to the Center for deposit in the Reserve Fund the amount recovered, less its out-of-pocket expenses. The Lender shall retain documentation in its files evidencing those expenses. The Lender shall only be required to pay to the Center amounts in excess of the amount of recovery needed to fully cover the Lender's loss on an Enrolled Loan.

For the purposes of this Section and Section 5.6, the Lender's loss on an Enrolled Loan may include loss of principal up to the enrolled amount, up to 90 days accrued interest on the enrolled principal balance, and up to one half (1/2) of the reasonable and documented out-of-pocket expenses incurred by the Lender in pursuing collection efforts.

Section 5.6. Subrogation.

- (a) If the payment of a Claim pursuant to Section 5.4 has fully covered the Lender's loss on an Enrolled Loan, or if the payment of a Claim pursuant to Section 5.4, when combined with any recovery from the Borrower, has fully covered the Lender's loss, the Center, 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 Center any right, title or interest to any collateral, security, or other right of recovery in connection with the loan. If such assignment has been made, the Center shall not be required to undertake any obligations of the Lender pursuant to its loan documents, except for any obligations directly related to the exercise by the Center of its assigned rights of recovery in connection with the loan. The Lender agrees that it will fulfill any other obligations it may have under the loan documents in the same manner and to the same degree as required had the assignment not been made. The Lender shall provide the Center with all reasonable assistance thereafter as the Center 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 Center as a result of enforcement actions taken with respect to any such collateral, security or other right of recovery shall be deposited by the Center in the Reserve Fund, less any out of pocket expenses incurred by the Center in taking the enforcement actions.
- (b) If the Center 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 Center, at its option, may pay, from funds in the Reserve Fund, an amount sufficient to cover the Lender's loss, 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 Center shall be subrogated to the rights of the Lender in accordance with this Section.

ARTICLE VI

REPORTING REQUIREMENTS

Section 6.1. Lender Reports. For each calendar year, the Lender is to submit to the Center within 30 days of the year-end a report listing Borrowers and outstanding balances of all Enrolled Loans as of the end of that preceding calendar year. In computing the aggregate outstanding balance of all Enrolled Loans, the balance of any loan shall in no event be considered to be greater than the covered amount of the loan as enrolled and, in the case of lines of credit, the outstanding balance shall be considered to be the enrolled line amount. Such report must indicate the following:

- (a) Name of Borrower
- (b) Amount of Loan
- (c) Amount of Enrolled Loan
- (d) Type of Loan (Term or Line)
- (e) Outstanding Balance of Loan
 - (1) If term loan – show the lesser of the outstanding balance or the enrolled loan amount and the enrollment date.
 - (2) If line of credit – show the enrolled line amount and the maturity date.

Section 6.2. Annual Non-sex Offender Recertification. An annual non-sex offender recertification confirming that the Lender continues to be compliant with Section 3001 (c)(2) of the Small Business Jobs Act of 2010, a sample of which is attached hereto as Exhibit 6.

Section 6.3. Center Reports. From time to time, but no less frequently than annually, the Center shall submit a report to the Lender indicating the aggregate amount of funds available under the Program. If at any time such report indicates that the aggregate amount of available funds is less than \$1,000,000.00, then during the period of time until the next report, the Lender may, but shall not be required to, contact the Center for confirmation of the aggregate amount of then available funds under the Program.

Section 6.4. Notification of Non-sex Offender Noncompliance. Should an event occur that renders obsolete the certification in Section 10.3 of this agreement, the Lender shall promptly notify the Center.

ARTICLE VII

WITHDRAWAL BY THE CENTER OF EXCESS RESERVE FUNDS

Section 7.1. If the annual reports filed under Section 6.1 indicate that, for the preceding year, the balance in the Reserve Fund account continuously exceeded fifty percent (50%) of the aggregate outstanding balance of all Enrolled Loans during that year, including unfunded portions of Enrolled Loans that are Lines of Credit, the Center may make a withdrawal from the Reserve Fund account after providing a thirty (30) notice. The amount of the withdrawal may be no greater than the minimum amount of any excess as continuously maintained over the immediately preceding twelve (12) calendar month period. Withdrawals of excess funds from the Reserve Fund account by the Center under this Section 7.1 may be used for any purpose in connection with the Program.

Section 7.2. If an annual report is not filed within thirty (30) days of the original due date of the report as established under Section 6.1 of this Agreement, the Center may make a withdrawal

from the Reserve Fund account, based on the Center's reasonable determination, for the preceding year, that the balance in the Reserve Fund account continuously exceeded fifty percent (50%) of the aggregate outstanding balance of all Enrolled Loans during that year, including unfunded portions of Enrolled Loans that are Lines of Credit. The amount of the withdrawal may not be greater than the minimum amount of any excess as continuously maintained over the immediately preceding twelve (12) calendar months. Withdrawals of excess funds from the Reserve Fund account by the Center under this Section 7.2 may be used for any purpose in connection with the Program.

Section 7.3. Notwithstanding any other provisions in this Agreement, the Center shall not withdraw any funds from the Reserve Fund if any Claim by the Lender remains unpaid.

ARTICLE VIII

TERMINATION OF OBLIGATION TO THE LENDER

Section 8.1. The Center may, in its sole discretion, terminate its obligation under this Agreement to enroll loans under the Program. The termination shall be applicable on the effective date specified in the notice of termination, except that the termination shall not apply to any loan which is made on or before the date on which the notice of termination is received by the Lender. However, if the Center is terminating the enrollment of loans not merely for the Lender but instead for all participating Lenders under the Program, the Center shall provide notice of at least ninety (90) days to the Lender. Any terminations under this Section shall be prospective only, and shall not apply to any loans previously enrolled under the Program, except that if a previously Enrolled Loan is refinanced, the amount covered under the Program shall not be increased beyond the covered amount as previously enrolled.

Section 8.2. After a termination pursuant to Section 8.1, if the balance of the Reserve Fund is reduced to zero, this Agreement shall automatically terminate.

ARTICLE IX

PLEDGE OF THE RESERVE FUND

The Center pledges the funds in the Reserve Fund to be available to pay Claims pursuant to Section 5.4. The Center further pledges that the Lender shall have a first security interest in the funds in the Reserve Fund to pay Claims pursuant to Section 5.4 and the Center will not encumber or pledge the funds to any other party. This pledge does not, however, diminish the ownership or control of the Reserve Fund granted to the Center in Section 5.2, and it shall not affect the Center's right to withdraw funds from the Reserve Fund pursuant to Section 5.2 or Article VII.

ARTICLE X

LENDER CERTIFICATIONS

Section 10.1. The Lender certifies that it is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation that, at a minimum, requires financial institutions, as that term is defined in section 5312 (a)(2) and (c)(1)(A) of title 31, United States Code, to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify

the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

Section 10.2. Consistent with OMB Circular A-129, the Lender certifies that it has at least 20% of its own capital at risk in any loan enrolled in the Program, unless a waiver has been granted.

Section 10.3. The Lender certifies that 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" is defined as "if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity."

Section 10.4. The Lender certifies that it is in compliance with the Right to Financial Privacy Act (12 U.S.C. § 3401 et seq.), as applicable.

ARTICLE XII

MISCELLANEOUS

Section 11.1. Amendments to Agreement. The Center may, with at least thirty (30) days 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 or enrolled prior to the effective date of the amendment, and no such amendment shall diminish the Lender's rights with respect to funds in the Reserve Fund account as of the effective date of the amendment.

Section 11.2. Lender Information. The Lender shall provide the Center with such information regarding its participation in the Program as the Center may reasonably require.

Section 11.3. Inspection of Files. The Lender agrees to make available to the Center, the Treasury and the Treasury Inspector General all books and records related to the use of the Allocated Funds, subject to the Right to Financial Privacy Act (12 U.S.C. §3401 et seq.), including detailed loan records, as applicable.

Section 11.4. Limitation of Rights. This Agreement shall be for the exclusive benefit of the Lender and the Center, 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, this Agreement.

Section 11.5. Notices. All notices, certificates, requests, filings or other communications under this Agreement shall be deemed sufficiently given when delivered by messenger, professional courier service, or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

Center: Rural Economic Development Center, Inc.
ATTN: N.C. Capital Access Program
4021 Carya Drive
Raleigh, North Carolina 27610

Lender: _____
ATTN: _____

Section 11.6. Contact Person. The Center and the Lender shall each designate a primary and secondary contact person or position for purposes of sending and receiving all communications between the Center and the Lender required under this Agreement.

Section 11.7. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the undersigned parties and their respective successors and assigns.

Section 11.8. No Personal Liability. No member, officer, or employee of the Center or of the Lender, 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.

Section 11.9. Collateral. Except upon the exercise of the Center's right of subrogation as set forth in Section 5.6 of this Agreement, the Center shall have no legal or equitable interest in any collateral, security, or other right of recovery in connection with any Enrolled Loan; and the Center's consent is not necessary for any amendment to the Lender's loan documents. This Section shall not be construed to modify any obligation of the Lender to make payments to the Reserve Fund account pursuant to this Agreement.

Section 11.10. Lender's Making and Collection of Loans. Within the context of the objectives of the Program, the Lender agrees to exercise the same degree of care and diligence in the making and collection of Enrolled Loans as it does in making and collecting loans in the ordinary course of its business.

Section 11.11. Captions. The captions in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent or any provisions or sections of this Agreement.

Section 11.12. Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina, excluding its conflicts of laws provisions.

Section 11.13. Compliance with Applicable Law. The Lender shall comply with all state and federal laws, rules and regulations.

Section 11.4. Reports of Regulatory Agencies. The Lender consents to the transmittal to the Center, by any financial institutions regulatory agency of the federal or state governments, any information directly relating to the Lender's participation in the Program. To the extent permitted by law, the Center shall hold any information acquired pursuant to this Section confidential.

Section 11.15. Severability. If any clause, provision or section of this Agreement is held illegal or invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section has not been contained herein.

Section 11.15. Entire Agreement. The Lender and the Center declare and represent that no promise, inducement or agreement not herein expressed or referred to has been made to any party. The parties further declare and represent that the entire agreement between the parties is contained within this Agreement, which has been drafted pursuant to the Act, and that the terms of this Agreement are contractual and not a mere matter of recital.

Lender: Signature: _____
 Printed Name: _____
 Title: _____

Date: _____

Attest: _____

Center:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attest: _____

**RURAL ECONOMIC DEVELOPMENT CENTER, INC.
NORTH CAROLINA CAPITAL ACCESS PROGRAM**

EXHIBIT 1

BORROWER'S CERTIFICATION

The undersigned Borrower (the "Borrower") acknowledges:

- (a) That the loan to be made by (Lender) _____ to the Borrower will be filed for enrollment by the Lender in the North Carolina Capital Access Program (the "Program"), a program established by the North Carolina Rural Economic Development Center, Inc. (the "Center");
- (b) That the purpose of the Program is to assist the Lender in making loans that might otherwise not qualify for a loan from the Lender and to provide financing for North Carolina small businesses and promote economic development in the state of North Carolina;
- (c) That as a condition of having the loan filed for enrollment in the Program, the Borrower is required to pay a non-refundable premium charge to an administrative account called the Reserve Fund, which Reserve Fund is established by the Center to help cover losses that the Lender may sustain on loans enrolled in the Program; and
- (d) That the Borrower's payment of its non-refundable premium charge will be collected by the Lender for transmittal to the Reserve Fund, that other payments or transfers will be made to the Reserve Fund by the Lender and the Center, and that the Borrower has no legal, beneficial, or equitable interest in the premium charges or any other funds credited to the Reserve Fund.

The Borrower represents that:

- (a) The Borrower is an entity with 500 or fewer employees;
- (b) The loan proceeds must be used for a "business purpose." A business purpose includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, 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.

Permissible Borrowers include corporations, partnerships, joint ventures, sole proprietorships, state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a "business purpose" as defined above.

- (c) The loan proceeds will not be used to:
 - (1) Repay a delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority; or
 - (2) Repay taxes held in trust or escrow, e.g. payroll or sales taxes; or
 - (3) Reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or
 - (4) Purchase any portion of the ownership interest of any owner of the business.
- (d) The Borrower is not:

- (1) An executive officer, director, or principal shareholder of the Lender; or
- (2) A member of the immediate family of an executive officer, director, or principal shareholder of the Lenders; or
- (3) A related interest of such executive officer, director, principal shareholder, or member of the immediate family.

For the purposes of these three Borrower restrictions, the terms “executive officer”, “director”, “principal shareholder”, “immediate family”, and “related interest” refer to the same relationship to a Lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(e) The Borrower is not:

- (1) 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 business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or
- (2) 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 certified as a Community Development Financial Institution; or
- (3) 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; or
- (4) A business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is 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
- (5) A business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

(f) No principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, “principal” is defined as “if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a 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.”

(g) The Borrower authorizes the Lender to report to the Center certain loan information as the Center may reasonably require.

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

OWNERSHIP (%): Male
 Female

RACE: American Indian or Alaska Native
 Asian
 Black or African-American
 Native Hawaiian or Pacific Islander
 White

ETHNICITY: Hispanic or Latino
 Not Hispanic or Latino

VETERAN STATUS: Veteran
 Non-Veteran

Full Legal Name of Business: _____

Primary Business Activity: _____

Annual Sales in Last Fiscal Year: _____

Year Business Established: _____

Total Full Time Employees (*2 half time employees equals 1 full time employee*): _____

Estimated Jobs Created by this Loan: _____

Estimated Jobs Retained by this Loan: _____

Borrower Signature: _____ Title: _____

Printed Name: _____ Date: _____

**RURAL ECONOMIC DEVELOPMENT CENTER, INC.
NORTH CAROLINA CAPITAL ACCESS PROGRAM**

EXHIBIT 2

NOTICE TO BORROWER

This notice is provided to Borrowers who may receive a loan from a Lender under the North Carolina Capital Access Program of the North Carolina Rural Economic Development Center, Inc.

The purpose of this program is to assist Lenders make loans to enhance financing availability for small businesses in North Carolina for the purposes of economic development. The program utilizes a special loss reserve to assist the Lender in covering losses from a portfolio of loans that a Lender makes under the program. The Borrower pays a premium charge to the reserve, which is sometimes matched by a financial institution premium payment to the reserve. The North Carolina Rural Economic Development Center, Inc. will then match the combined total of the Borrower's payment and the financial institution's payment.

It is important to emphasize that the loan is a private transaction between the financial institution 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 financial institution that is bearing the risk of the loan. The North Carolina Rural Economic Development Center, Inc. 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 financial institution's rights and remedies are delineated in the loan contract and in law applicable to any financial institution financing. The North Carolina Rural Economic Development Center, Inc. plays no role in any decision by the financial institution with respect to enforcing the financial institution's rights under the loan contract.

While the purpose is intended to assist the financial institution in providing you with access to financial institution financing, you should understand that it is likely to be more expensive for the Borrower than would be the case with a conventional financial institution loan. The Borrower and the Lender make payments to the Reserve Fund, and the Lender may recover from the Borrower the cost of its payment into the Reserve Fund.

**RURAL ECONOMIC DEVELOPMENT CENTER, INC.
NORTH CAROLINA CAPITAL ACCESS PROGRAM**

EXHIBIT 3

LOAN ENROLLMENT FORM

1. Lender Name: _____
2. Lender (Tax) ID Number: _____
3. Lender Loan Number: _____
4. Date Loan Contract Entered into: _____
5. Name of Borrower: _____
6. Physical Address of Borrower: _____
City: _____ State: _____ Zip: _____
7. County Location of Borrower: _____
8. County Location of Business: _____
9. NAICS Code: _____
10. Loan Type (Please check one): Term Line of Credit Other
11. Total Amount of Loan: \$ _____
12. Total Covered Amount of Loan: \$ _____
13. Use of Loan Proceeds (briefly describe the use of the loan proceeds): _____

- | | YES | NO |
|---|--------------------------|--------------------------|
| 14. If the Loan is being used to purchase a business, the proceeds may only be used to purchase the assets of the business and not for goodwill or other business ownership interest. Is the loan purpose consistent with the above requirement? | <input type="checkbox"/> | <input type="checkbox"/> |

If NO:

- This Loan is not eligible for the NC-CAP Program. Eligible Loans cannot include any goodwill, stock purchases or other ownership interests of the business.

- | | | |
|--|--------------------------|--------------------------|
| 15. Are Loan Proceeds being used to refinance any of the Lender's existing debt? | <input type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|

If YES:

- | | | |
|---|--------------------------|--------------------------|
| • Did the refinanced Loan mature by the refinance date? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Was new money included with the refinanced Loan that was used for a new purpose other than that of the refinanced debt? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Has there been a new underwriting of the debt? | <input type="checkbox"/> | <input type="checkbox"/> |

All eligible loans which are refinanced by the existing Lender must meet all of the above qualifications. A copy of the maturing Loan Note must be submitted to the Rural Center with the Loan Enrollment Form. These qualifications are not required when refinancing another lender's debt. (Note: if the existing loan was previously enrolled in NC-CAP, the incremental amount can be enrolled – see questions 17-19))

- | | | |
|---|--------------------------|--------------------------|
| 16. Is this Loan being made to a Real Estate Holding Company? | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|

If YES:

- | | | |
|--|--------------------------|--------------------------|
| • Name of Operating Company: _____ | | |
| • Did both Operating Company & Holding Company sign Borrower Certifications? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Is there a lease between the Holding Company and the Operating Company for the term of the Loan (including options to renew only for the Operating Company)? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Did owners with 20% or more interest in both the Holding Company and the Operating | | |

- Company sign personal guarantees?
- Is the Operating Company either a Co-Borrower or a Guarantor on the loan?

17. Is this Loan being made to a religious establishment?

If YES:

- A religious establishment is eligible for the Capital Access Program if the business purpose of the loan is not explicitly religious including directly supporting, assisting or furthering an explicitly religious purpose, including, but not limited to, worship, religious instruction, or proselytization.
- Is this loan for an acceptable business purpose, as defined above?

Eligible loans must meet all of the above qualifications. In addition, the Lender must provide the required supporting documentation to the Rural Center at the time of the enrollment.

Only complete 17-19 if refinancing an enrolled NC-CAP loan.

18. Previous Covered Loan Amount: \$ _____

19. Balance Immediately Prior to Refinancing: \$ _____

20. New Total Covered Loan Amount: \$ _____

21. Percent Premium paid by Borrower: _____ %

22. Dollar Amount of Borrower Payment to the Reserve Fund: \$ _____

23. Percent Premium paid by Lender (which can be recovered from Borrower at closing): _____ %

24. Dollar Amount of Lender Payment to the Reserve Fund: \$ _____

PLEASE NOTE: The Lender must provide separate proof (deposit slips, screen shot of bank ledger, checks etc.) of the Borrower and the Lender's payment to the Reserve Fund.

LENDER'S CERTIFICATION

I herby certify to the Rural Center that: 1. This Loan is not being made in order to place under the protection of the NC Capital Access Program prior debt that is not covered under the NC Capital Access Program and that is or was owed by the Borrower to the Lender or to an affiliate of the Lender. 2. This Loan is not a refinancing of a loan previously made to that Borrower by the Lender or an affiliate of the Lender. 3. The Lender is not attempting to enroll the unguaranteed portions of SBA-guaranteed loans.

Certifying Lender Signature: _____ Date: _____

Printed Name: _____ Title: _____

Lender Telephone: _____ Lender Email: _____

IN ORDER TO ENROLL THE LOAN INTO NC-CAP, PLEASE SCAN AND EMAIL THE: **LOAN ENROLLMENT FORM, BORROWER'S CERTIFICATION, PROOF OF LENDER DEPOSIT AND BORROWER DEPOSIT AND ANY SUPPORTING DOCUMENTATION OF ELIGIBILITY TO ENROLLMENTS@NC-CAP.ORG.**

NC RURAL CENTER USE ONLY

Total Borrower/Lender Payment: \$ _____ % Date: _____

Verify Borrower Payment Received: \$ _____ %
Verify Lender Payment Received: \$ _____ %
Rural Center Matching Payment: \$ _____ % Date: _____
US Census Tract #: _____

NC-CAP Program Authorization

Date

**RURAL ECONOMIC DEVELOPMENT CENTER, INC.
NORTH CAROLINA CAPITAL ACCESS PROGRAM**

EXHIBIT 4

CLAIM FORM

1. Name of Lender: _____
2. Lender (*Tax*) ID #: _____
3. Name of Borrower: _____
4. NC-CAP Loan #: _____
5. Original Amount of Enrolled Loan: _____
6. Outstanding Balance of Loan (*Immediately prior to charge-off*): _____
7. Claim Details
 - a. Principal: \$ _____
 - b. Accrued Interest (*up to 90 days*): \$ _____
 - c. Up to One Half of Documented Collection Costs: \$ _____
 - d. Total Claim Amount: \$ _____

Submit the completed Claim Form along with proof the above loan has been charged off to:
claims@nc-cap.org

Authorized Signature: _____
Name and Title (*Printed*): _____
Date: _____

RURAL CENTER USE ONLY
Rural Center Claim Payment: \$ _____

NC-CAP Program Authorization Date

Finance and Administration Date

**RURAL ECONOMIC DEVELOPMENT CENTER, INC.
NORTH CAROLINA CAPITAL ACCESS PROGRAM**

EXHIBIT 5

SPECIAL CLAIM FORM
(PARTIALLY PAID CLAIMS)

The Special Claim Form is used when the Reserve Fund has insufficient funds to pay a claim.

1. Name of Lender: _____
2. Lender (*Tax*) ID #: _____
3. Name of Borrower: _____
4. NC-CAP Loan #: _____
5. Original Amount of Enrolled Loan: _____
6. Calculation of Loan Balance (*Immediately prior to charge-off*):
 - a. Principal: \$ _____
 - b. Accrued Interest (*up to 90 days*): \$ _____
 - c. Up to One Half of Documented Collection Costs: \$ _____
 - d. Total Claim Amount: \$ _____
7. Calculation of Claims Owed
 - a. Paid Claims on Loan to Date \$ _____
 - b. Claims still owed (subtract 6.a. from 5.d.): \$ _____
8. Calculation of Reserve Available
 - a. Balance in Reserve Fund: \$ _____
 - b. Claim Balance Available (multiply 7.a. by 75%) \$ _____
9. Current Claim (the lesser of 6.b. and 7.b.): \$ _____

Submit the completed Claim Form, along with proof the above loan has been charged off to:
claims@nc-cap.org.

Authorized Signature: _____
Name and Title (*Printed*): _____
Date: _____

RURAL CENTER USE ONLY

Rural Center Claim Payment: \$ _____

NC-CAP Program Authorization Date

Finance and Administration Date

**RURAL ECONOMIC DEVELOPMENT CENTER, INC.
NORTH CAROLINA CAPITAL ACCESS PROGRAM**

EXHIBIT 6

Lender Name

NON-SEX OFFENDER RECERTIFICATION

As required by the US Treasury under Section 3011(c)(2) of the Small Business Jobs Act of 2010, this annual recertification must be provided from any private entity receiving financial assistance using funds received by a participating State under the State Small Business Credit Initiative. This recertification will become part of the Master Participation Agreement between the Lender and the NC Rural Center.

Sex Offense Against Minor. The Lender certifies that 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” is defined as “if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.”

Certifying Lender Signature: _____ Date: _____
Printed Name: _____ Title: _____