

## **BORROWER'S AGREEMENT**

The undersigned borrower (the "Borrower") [ \_\_\_\_\_ ] acknowledges and agrees that:

- (a) the loan to be made by [ \_\_\_\_\_ ] ("Lender") to the Borrower (the "Loan") will be filed for enrollment by the Lender in CAB (the "Program") established by Connecticut Innovations, Inc. ("CI"), 865 Brook St., Rocky Hill, Connecticut 06067;
- (b) the purpose of the Program is to assist the Lender in making loans that would otherwise not qualify for a loan from the Lender;
- (c) as a condition of and as consideration for enrollment of the Loan in the Program, the Borrower is required to pay a non-refundable premium charge to the Reserve Fund, which Reserve Fund is established by CI to help cover losses that the Lender may sustain on loans enrolled in the Program; and
- (d) the Borrower's payment of its non-refundable premium charge will be collected by the Lender for transmittal to the Reserve Fund, and other payments or transfers will be made to the Reserve Fund by the Lender and CI.

The Borrower acknowledges the foregoing and, in consideration thereof and to induce CI to accept the Loan for Enrollment in the Program;

- (i) the Borrower 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 premium charges or any other funds credited to the Reserve Fund, and hereby waives any right, claim or interest to any and all such funds paid or credited to the Reserve Fund from time to time;
- (ii) the Borrower agrees that neither the State of Connecticut, CI nor any director, officer, employee or agent thereof, shall be liable to Borrower in any manner arising directly or indirectly from their participation in the Program and covenants and agrees not to bring any legal action or file any claim against the aforesaid persons or entities;
- (iii) the Borrower shall indemnify the State of Connecticut, CI and any director, officer, employee or agent thereof and hold them harmless from and against any actions, judgments, suits, obligations, penalties, disbursements of any kind or nature whatsoever, claims, damages, losses, liabilities, costs or expenses (including, without limitation, attorney's fees and disbursements) resulting directly or indirectly from the Borrower's acts or omissions in connection with the Program or the Borrower's Loan;
- (iv) the Borrower agrees CI shall have the right to audit, copy or extract any information from files held by the Lender in connection with the Loan. In addition, CI shall not be required by the Borrower to maintain the confidentiality of information obtained from such files that is required to be disclosed pursuant to federal, state or local law, rules or regulations. However, certain information delivered by the Borrower to CI is exempt from the Freedom of Information Act;
- (v) the Borrower acknowledges that the loan documents are assignable by the Lender to CI without the Borrower's consent, and that the Borrower's obligations pursuant to the loan documents shall not be impaired in any manner by any such assignment;
- (vi) the Borrower agrees to comply with the Affirmative Action Policy of CI, including without limitation, the execution and delivery, of non-discrimination certification. Borrower agrees that such executed Policy Statement or Plan shall be attached to this Agreement and delivered to CI;
- (vii) the Borrower agrees that CI may, at any time in its sole discretion, print, publish, or otherwise disseminate any of the following information concerning the Loan, in oral or written form, and in any medium, for the purpose of advertising or promoting or reporting upon CI's services and programs: (a) Name and address of the Borrower; (b) Amount of the Loan; (c) Interest rate and maturity of the Loan; (d) Purpose of the Loan; and (e) Number of jobs retained or to be created as a result of the project which the Loan finances.
- (viii) With respect to a Small Business Assistance Loan, the Borrower represents and warrants that the Borrower is a Small Business (with primary operations) located in Connecticut and the proceeds of the Loan will only be used in connection with the Borrower's Small Business.

(ix) As to all Loans the Borrower represents and warrants and certifies that:

- (1) the Borrower is a business enterprise, whether profit or non-profit, which is authorized to conduct business in the State of Connecticut;
- (2) the proceeds of the Loan will not be used for Housing Development Financing;
- (3) the proceeds of the Loan will not be used for Passive Ownership Real Estate Financing;
- (4) the proceeds of the Loan will not be used by the Borrower to refinance existing indebtedness except as authorized in writing by the Lender;
- (5) the Borrower is not 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 any such executive officer, director, principal shareholder, or member of the immediate family;
- (6) the Borrower has no currently outstanding loans, either from the Lender or any other lender, which are enrolled in the Program, except as set forth on Schedule A hereto.

The borrower represents and warrants and certifies the following to the Lender:

- (i) The loan proceeds will be used for a “business purpose.” 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 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.
- (ii) 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’s continuance; or
  - (4) to purchase any portion of the ownership interest of any owner of the business.
- (iii) The borrower or investee 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 an such executive officer, director, principal shareholder or member of the immediate family.

For the purposes of these three 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.

- (iv) 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 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.

The Borrower acknowledges that this Loan has been made with the intent that it be enrolled in the Program and is therefore subject to the terms of Section 32-5a of the Connecticut General Statutes, as amended from time to time. Section 32-5a, as it may be amended from time to time:

- (i) provides that a business organization receiving financial assistance from CI shall not relocate outside of the State of Connecticut for (i) ten (10) years after receiving such assistance from CI or (ii) during the term that any loan or loan guarantee constituting such financial assistance is outstanding, whichever is longer (such period being hereafter referred to as the "Benefit Period"), unless the full amount of the assistance is repaid to CI and a penalty equal to five percent (5%) of the total assistance received is paid to CI; and
- (ii) provides that if such business organization relocates within the State of Connecticut during the Benefit Period, such business organization shall offer employment at the new location to its employees from the original location if such employment is available.

Notwithstanding anything herein to the contrary, if at any time within the Benefit Period the Borrower relocates (as such term is defined in Section 32-5a of the Connecticut General Statutes, and regulations related thereto, as the same may be amended from time to time) outside of the State of Connecticut (an "Out-of-State Relocation") or relocates within the State of Connecticut and does not offer employment as provided above, then:

- (i) such action shall constitute an immediate event of default under the Loan documents and CI, at its option, may terminate its obligations under the Program with respect to this Loan (if the same is still in effect) by giving written notice thereof to the Lender following such Out-of-State Relocation or failure to provide employment, which termination shall be effective ninety (90) days after the date of such notice unless the Lender files a claim prior to such date. In the event that the Lender, as a result of such notice and prior to the effective date of such termination, files a claim, coverage under the Program shall continue following the filing of such claim; and
- (ii) with respect to an Out-of-State Relocation, the Borrower agrees that it shall immediately pay to CI an amount equal to the sum of (a) the aggregate amount paid by CI at any time on account of this Loan from or under the Program plus (b) a penalty equal to five percent (5%) of the sum of (i) the premium charges paid into the Reserve Fund established pursuant to the Master Participation Agreement dated, \_\_\_\_\_, as amended from time to time, between the Lender and CI plus (ii) the amount of Supplemental Insurance to which the Loan was

originally entitled upon enrollment in the Program, such penalty to be due and payable whether or not CI has made any payment on account of this Loan.

If the Borrower decides to relocate within or outside of the State of Connecticut at any time within the Benefit Period, the Borrower agrees to provide CI and the Lender with immediate written notice when such decision is made, together with such other information concerning such relocation as CI or the Lender may request.

The Borrower's obligations hereunder shall survive the repayment of the Loan(s) and the termination of CI's obligations with respect to the Enrolled Loans under the Program.

The Borrower acknowledges that the agreements, covenants and acknowledgments contained herein are for the benefit of the State of Connecticut, CI and any director, officer, employee, or agent thereof and, as such, are irrevocable without the prior written consent of CI on behalf of such entities or persons.

\_\_\_\_\_  
Borrower Name:

\_\_\_\_\_  
Dated:

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