

Loan Agreement and Borrower's Certification Sample documents (Appendix D of the National EWCP Authorization Boilerplate version 1.4)

This document is a copy of Appendix D of the National EWCP Authorization Boilerplate version 1.4 in MS-Word format. It contains 2 sample documents provided to lenders under the conditions described below:

SBA does not require that a lender use a loan agreement. It is up to a lender to determine whether a loan agreement is needed for its lending practice. Paragraph C. of the Boilerplate states that it is a lender's sole responsibility to close the loan in accordance with the terms and conditions of the authorization, to obtain valid and enforceable loan documents, and to retain the documents.

SBA does not require a loan agreement but does require that the documents be enforceable and that the borrower makes certain certifications.

Lenders are provided with a sample **Loan Agreement** form (1 page) which they may use. SBA is leaving the issue of whether a loan agreement is required, and what form it should take, up to the lender, but SBA does require that necessary borrower's certifications be made in writing.

Lenders are also provided with a sample form, **Borrower's Certifications** (2 pages), which is a compilation of the various certifications found in the Boilerplate and provides a space for the borrower to initial next to those certifications applicable to the particular loan. Lenders will need to retain an executed document containing these certifications, and may use this sample form as a basis for that document or for incorporating the required certifications into their loan agreement.

LOAN AGREEMENT

THIS LOAN AGREEMENT (“Agreement”) is made _____, _____ between the Borrower and Lender identified in the attached Authorization issued by the U.S. Small Business Administration (“SBA”) to Lender, dated _____, _____, SBA Loan Number _____ (“Authorization”).

SBA has authorized a guaranty of a loan from Lender to Borrower for the amount and under the terms stated in the attached Authorization (the “Loan”).

In consideration of the promises in this Agreement and for other good and valuable consideration, Borrower and Lender agree as follows:

1. Subject to the terms and conditions of the Authorization and SBA’s Participating Lender Rules as defined in the Guarantee Agreement between Lender and SBA, Lender agrees to make the Loan if Borrower complies with the following “Borrower Requirements”. Borrower must:
 - a. Provide Lender with all certifications, documents or other information Lender is required by the Authorization to obtain from Borrower or any third party;
 - b. Execute a note and any other documents required by Lender; and
 - c. Do everything necessary for Lender to comply with the terms and conditions of the Authorization.
2. The terms and conditions of this Agreement:
 - a. Are binding on Borrower and Lender and their successors and assigns;
and
 - b. Will remain in effect after the closing of the Loan.
3. Failure to abide by any of the Borrower Requirements will constitute an event of default under the note and other loan documents

Borrower: _____

Lender: _____

BORROWER'S CERTIFICATION

INSTRUCTIONS: INDICATE THE PARAGRAPHS BEING CERTIFIED TO BY HAVING THE BORROWER INITIAL IN THE [_____] NEXT TO THE APPROPRIATE PARAGRAPHS, PRIOR TO SIGNING.

In order to induce _____ ("Lender") to make a U. S. Small Business Administration ("SBA") guaranteed Loan, SBA Loan Number _____ ("Loan") to _____ ("Borrower"),

A. Borrower certifies that:

- [_____] 1. **Receipt of Authorization** — Borrower has received a copy of the Authorization for this Loan and SBA Form 793, Notice to New SBA Borrower, from Lender, and acknowledges that:
- The Authorization is not a commitment by Lender to make a loan to Borrower;
 - The Authorization is between Lender and SBA and creates no third party rights or benefits to Borrower;
 - The Note will require Borrower to give Lender prior notice of intent to prepay.
 - If Borrower defaults on Loan, SBA may be required to pay Lender under the SBA guarantee. SBA may then seek recovery of these funds from Borrower. Under SBA regulations, 13 CFR Part 101, Borrower may not claim or assert against SBA any immunities or defenses available under local law to defeat, modify or otherwise limit Borrower's obligation to repay to SBA any funds advanced by Lender to Borrower.
 - Payments by SBA to Lender under SBA's guarantee will not apply to the Loan account of Borrower, or diminish the indebtedness of Borrower under the Note or the obligations of any personal guarantor of the Note.
- [_____] 2. **Adverse Change** — That there has been no adverse change in Borrower's financial condition, organization, operations or fixed assets since the date the Loan application was signed.
- [_____] 3. **Child Support** — No principal who owns at least 50% of the ownership or voting interest of the company is delinquent more than 60 days under the terms of any (1) administrative order, (2) court order, or (3) repayment agreement requiring payment of child support.
- [_____] 4. **Current Taxes** — Borrower is current on all federal, state, and local taxes, including but not limited to income taxes, payroll taxes, real estate taxes, and sales taxes.
- [_____] 5. **Environmental** — For real estate located at (address) _____:

- At the time Borrower submitted the Loan application, Borrower was in compliance with all local, state, and federal environmental laws and regulations pertaining to environmental contamination;
- Borrower has and will continue to comply with these laws and regulations;
- Borrower has no knowledge of any environmental contamination of any real or personal property pledged as collateral for the Loan which violates any such laws and regulations, (other than what was disclosed in connection with the Environmental Investigation of the property);
- Borrower assumes full responsibility for all costs incurred in any clean-up of environmental contamination and agree to indemnify Lender and SBA against payment of any such costs (Lender or SBA may require Borrower to execute a separate indemnification agreement);
- Until full repayment of Loan, Borrower will promptly notify Lender and SBA if it knows, suspects or believes there may be any environmental contamination in or around the real

property securing the Loan, or if Borrower or such property are subject to any investigation or enforcement action by any Governmental agency pertaining to any environmental contamination of the property.

B. Borrower certifies that they will:

- [_____] 1. **Reimbursable Expenses** — Reimburse Lender for expenses incurred in the making and administration of the Loan.
- [_____] 2. **Books, Records, and Reports** —
- a. Keep proper books of account in a manner satisfactory to Lender;
 - b. Furnish [*check one if appropriate*: compiled - reviewed - audited] year-end statements to Lender within _____ days [*120 days, if not filled in*] of fiscal year end;
 - c. Furnish additional financial statements or reports whenever Lender requests them;
 - d. Allow Lender or SBA, at Borrower's expense, to:
 - 1) Inspect and audit books, records and papers relating to Borrower's financial or business condition; and
 - 2) Inspect and appraise any of Borrower's assets; and
 - 3) Allow all government authorities to furnish reports of examinations, or any records pertaining to Borrower, upon request by Lender or SBA.
 - e. Provide at least monthly a list of:
 - 1) Aged foreign accounts receivable.
 - 2) All current, unshipped purchase orders and their cancellation date.
 - 3) Letters of credit not yet negotiated and their validity date; and/or
 - 4) **[Write your own]**.
 - f. Provide Lender with a monthly cash flow projection of all known operational activity on at least an annual basis for the term of the loan.
 - g. Provide Lender with a monthly borrowing base certificate, in a form satisfactory to Lender, so that Lender may reconcile the borrowing base certificates at least monthly.
 - h. Provide Lender with a monthly **[OPTIONS - aging report of foreign accounts receivable] OR [export inventory schedule] OR [aging report of foreign accounts receivable and export inventory schedule]**, in a form satisfactory to Lender, so that Lender may determine the appropriate amount to advance.
 - i. Review and execute the CAP-1050, Semi-Annual Funds Disbursement Report when directed by the Lender.
- [_____] 4. **Equal Opportunity** — Post SBA Form 722, Equal Opportunity Poster, where it is clearly visible to employees, applicants for employment and the general public, and comply with the requirements of SBA Form 793, Notice to New SBA Borrowers.
- [_____] 5. **American-made Products** — To the extent practicable, purchase only American-made equipment and products with the proceeds of the Loan.
- [_____] 6. **Taxes** — Pay all federal, state, and local taxes, including income, payroll, real estate and sales taxes of the business when they come due.

C. Borrower certifies that it will not, without Lender's prior written consent:

- [_____] 1. **Distributions** — Make any distribution of company assets that will adversely affect the financial condition of Borrower.
- [_____] 2. **Ownership Changes** — Change the ownership structure or interests in the business during the term of the Loan.

[_____] 3. **Transfer of Assets** — Sell, lease, pledge, encumber (except by purchase money liens on property acquired after the date of the Note), or otherwise dispose of any of Borrower's property or assets, except in the ordinary course of business.

[_____] 4. **Fixed Asset Limitation** — Acquire by purchase or lease agreement any fixed assets (totaling more than \$_____ in any year).

[_____] 5. **Location Limitation** — Acquire by purchase or by lease, any additional locations.

[_____] 6. **Limitation on Compensation** — Allow total annual salaries, withdrawals or other forms of remuneration to officers or owners of Borrower or their immediate family members, to exceed \$_____.

[_____] 7. _____

(Borrower) Date

By: _____