

**ATTACHMENT III**

**BUSINESS & EMPLOYMENT COMMITMENT AGREEMENT**

**MINIMUM TERMS AND CONDITIONS**

Grantee hereby warrants and agrees that the Business & Employment Commitment Agreement to be executed in conformance with the requirements of Exhibit A of the Grant Agreement shall be subject to approval by CDFA and shall contain at a minimum the following terms and conditions:

1. REPRESENTATION AND WARRANTIES. \_\_\_\_\_(the "Business") shall represent and warrant:

1.1 That the Business is a duly organized and validly existing New Hampshire corporation in good standing under the laws of the State of New Hampshire. The Business has the power and authority to carry on the business to be conducted as part of the Grant Activities and has the power to execute and deliver and perform its obligations under the Business & Employment Commitment Agreement and Loan Agreement.

1.2 This Business & Employment Commitment Agreement and the Loan Agreement are legal, valid and binding obligations of the Business, enforceable against the Business in accordance with their terms.

1.3 The Business shall comply in all material respects with all applicable statutes, regulations and rules of federal, state and local governments in respect to the conduct of its business and operations, including without limitation all applicable environmental statutes, regulations and rules and all statutes, pertaining to the manufacturing of its products.

1.4 No application, exhibit, schedule, report or other written information provided by the business or its agents to Grantee or CDFA in connection with the negotiation, execution and closing of the Grant Agreement, the Loan Agreement or this Business & Employment Commitment Agreement knowingly contained when made any material misstatement of fact, or knowingly omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances under which they were made.

2. PURPOSE OF BUSINESS & EMPLOYMENT COMMITMENT AGREEMENT: PROJECT ACTIVITIES.

2.1 The purpose of the project, which is the subject of this Business & Employment Commitment Agreement, is the grant of CDBG funds is to be used for a loan in the amount of \$\_\_\_\_\_ from \_\_\_\_\_ to provide \_\_\_\_\_ to the Business located in \_\_\_\_\_, NH.

2.2 As a result of the direct benefit from the Loan to the Business, the Business has agreed to enter into a specific employment commitment, requiring the creation of jobs to be available to individuals of Low and Moderate Income.

2.2.1 In compliance with the State CDBG administrative standards for evaluating the Public Benefit of the Project activity, the Grantee and Business understand that the standard for measuring the maximum allowable Grant funds for any project is \$20,000, for each permanent full-time equivalent job created.

2.3 In carrying out the purpose of the project, the Business agrees to create a minimum of \_\_\_\_\_ ( ) permanent full-time-equivalent jobs.

2.3.1 Of these full-time-equivalent jobs, a minimum of \_\_\_\_\_ ( ) said jobs will available to low and moderate income persons.

2.3.2 The job functions will consist of:

\_\_\_\_\_

\_\_\_\_\_

2.3.3 The benefits plan being offered by the Business include:

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2.4 The Business shall enter into a Business & Employment Commitment Agreement with the Grantee, meeting the terms and conditions as required herein, which shall provide that the Business, its successors and assigns shall create the full-time equivalent jobs at the project property, as set forth in paragraph 2.3 and 2.3.1.

2.5 The Business and Employment Commitment Agreement shall stipulate that the Business shall provide the benefits as set forth in paragraph 2.3.3.

3. SECURITY: MORTGAGE LIEN

3.1 The Business shall provide, via the Subrecipient's Loan, a 1st position \_\_\_\_\_ describe security here \_\_\_\_\_. Subrecipient shall ensure compliance with the terms of the loan documents, which shall provide for recovery of the CDBG funds to the Grantee and on behalf of CDFA, in the event that the employment commitments as provided herein are not achieved. In such an event of default the amount of CDBG funds subject to recovery in accordance with this paragraph shall be no more than \$\_\_\_\_\_.

As stated, lien on all business assets provides a secured guarantee of the performance of the job creation commitment by the Business. If the Grantee and the Business wish to propose an alternative form of collateral of similar value, the CDFA will consider its proposal, provided it offers a similar level of security.

The mortgage or other acceptable lien shall be submitted to CDFA for its approval. Grantee shall submit to CDFA documentation of the mortgage or other lien recording.

3.2 Any CDBG funds returned to Grantee pursuant to enforcement of the security lien shall be returned to CDFA.

4. MATCH REQUIREMENTS.

4.1 The agreement shall require that the Grantee ensure that the required match for the CDBG funds of not less than \$\_\_\_\_\_ in additional financing for the Project Activities will be documented and submitted to CDFA.

4.1.1 A loan from ( ) in the amount of \$\_\_\_\_\_;

5. INITIAL DOCUMENTATION

5.1 To document the existing employees of the Business at the start of this Project, The Business shall provide to the Grantee, directly or via Subrecipient as applicable, certified payrolls documenting the number of full-time and full-time equivalent employees and position titles in all US operations, no earlier than the date of application of \_\_\_\_\_, as approved by CDFA.

5.2 To document the permanent, full time positions to be created, the Business shall provide the Grantee, directly or via Subrecipient, as applicable, with a listing, by job title, of the total jobs to be created, indicating: (a) which jobs will be available to low and moderate income persons; (b) which jobs will require special skills or education; and (c) which jobs will be part-time. This listing should be no different from the information for said jobs, as provided at the time of application.

5.3 Implementation Schedule. All parties to this grant have agreed on an implementation schedule, which will provide for the completion of all grant activities, prior to the grant completion date. A schedule of major milestones shall be provided, and shall serve as a basis for enforcement of the Agreement.

5.5 Grant Completion Date. All work shall be completed prior to the Grant Completion Date as outlined in Section 1.7 of the General Provisions. All employment commitments shall be accomplished by that date.

5.5.1 Project Delays. Should the Project encounter delays relating to financing, construction or other events that may affect the Business' ability to create the jobs within the specified Grant Completion Date, the Business and Grantee shall submit a written request for a time extension to CDFA, describing the reason for delay. Grant completion time extension requests shall then be forwarded to Governor and Council for final approval.

5.6 Business Insurance Requirements. Grantee shall ensure that the Business obtains and maintains in force comprehensive general liability insurance against all claims of bodily injury or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per incident. This insurance shall be at Business' sole expense. All policies shall name Grantee, Subrecipient (if applicable) and CDFA as additional insureds. The Business shall provide the Grantee with certificates of insurance, which evidences compliance with this section.

Furthermore, the Grantee shall require that the Business obtain and maintain in force, at its sole expense, insurance coverage for all real property or assets purchased with grant funds, as applicable to the project activities.

All policies described in this section shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. All policies shall be on an "occurrence" basis. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than thirty (30) days after written notice thereof has been received by the Grantee and CDFA.

5.7 Taxes. The Business shall certify that it has paid all taxes, assessments, charges, fines and impositions attributed to all real property or assets of the Business, as applicable.

## 6. REPORTING REQUIREMENTS:

6.1 Semi Annual reports shall be submitted by the Grantee, not less than five (5) business days prior to the semi-annual submission date, that is, no later than July 10, for the period of January 1 through June 30 and no later than January 10, for the period of July 1 through December 31 of each year. The reporting period shall begin on the date of Governor and Council approval and end on the Completion Date specified in Section 1.7 of the General Provisions of the contract between the Grantee and CDFA.

6.2 Responsibilities of the Grantee For both Semi-annual reporting and Closeout reporting, the Grantee shall be responsible for obtaining, preparing and submitting the following documentation:

6.2.1 The "Periodic Progress Report", which includes the Beneficiary Characteristics and data. For each reporting period, the report shall indicate the number and percentage of new persons hired for the specified positions from Low and Moderate Income families benefiting from this project, as well as the minority status or protected class status information. The data is derived from the Family Income Verification Form.

6.2.2 Semiannual and closeout documentation to be submitted to CDFA shall also include:

- a. Copies of the Family Income Verification forms signed by all new hires, from the Business. The Family Income Verification form documents family income status and the designation of beneficiary minority or protected class status. The Family Income Verification form for new job beneficiaries is provided in Attachment V;
- b. Copies of current company payrolls, certified by an authorized officer of the Business, listing names of all employees and job titles; and
- c. A list of all employees hired since the last reporting period, from the Business, documenting actual job creation/retention which includes: employee name, job title, date of hire, income

classification and beneficiary characteristics, that is minority or protected class status. See Attachment 1-C, from application.

**6.3 Responsibilities of the Business** In order to comply with the required reports, the Business is responsible for providing to the Grantee a variety of information, which allows for the verification and documentation of family income status and of minority or protected class status for new employees and applicants, in accordance with the federal regulations set forth in Exhibit A of the Grant Agreement. The specific data to be provided by the Business is:

- a. Copies of the Family Income Verification forms signed by all new hires, for the current positions being created are to be provided on a semi-annual basis to the Grantee. The Family Income Verification form documents family income status and the designation of beneficiary minority or protected class status. The Family Income Verification form for job applicants and beneficiaries is provided in Attachment V;
- b. Copies of current company payrolls, certified by an authorized officer of the Business, listing names of all employees and job titles; and
- c. A list of all employees hired since the last reporting period, from the Business, documenting actual job creation/retention which includes: employee name, job title, date of hire, income classification and beneficiary characteristics, that is minority or protected class status. See Attachment 1-C, from application.

## 7. OTHER EMPLOYMENT CONDITIONS.

7.1 The parties acknowledge that the obligation of the Business to create the specified minimum number of jobs for Low and Moderate Income Persons is an essential component of the Grantee's willingness to enter into the grant and into this Business and Employment Commitment Agreement with the Business, upon the terms and conditions set forth in such agreements, or other documents. The Business agrees that it shall exercise good faith at all times in its hiring practices in order to achieve its job commitments.

7.2 In the event that the Business fails to create the minimum number of jobs required to be filled with persons from Low and Moderate Income Families or other employment commitments as provided in this Agreement, then the Business shall confer forthwith with the Grantee, and the Subrecipient, as applicable, and CDFA to develop a mutually acceptable plan pursuant to which it will rectify any employment shortfalls and maintain the required minimums. In such event, the Business shall also provide Grantee with monthly updates containing information in a form reasonably satisfactory to the Grantee or the Subrecipient, as applicable, in order for the Grantee and Subrecipient to determine whether it is in compliance with such plan and its employment obligations as provided herein. Said monthly reports to continue until the employment commitments are achieved.

7.3 The continued failure of the Business to achieve its employment commitments as required herein for ninety (90) days following the date specified for such requirement shall constitute an event of default under this Business and Employment Commitment Agreement, which may give rise to any of the remedies available to the Grantee, or Subrecipient, if applicable, as set forth therein.

7.4 In any other agreement entered into between the Grantee, the Subrecipient, and the Business, the Grantee shall include, as an event of default, the failure to meet the employment commitments and reporting requirements as provided herein. Upon breach of the employment commitments or reporting requirements giving rise to an event of default, the Grantee, with the Subrecipient if applicable shall undertake efforts to result in a cure of the default or shall, where applicable, terminate the loan or other agreement and seek damages or other relief as appropriate.

## 8. ACCOUNTING, AUDIT AND RECORD KEEPING REQUIREMENTS.

8.1 All of the records, documents and data described required to provide all employment verification information shall be kept during the performance of the Project and for three (3) years after its completion or

until the satisfactory completion of an audit, whichever is later.

8.2 The Business shall make available to Grantee, CDFA and HUD or any of their duly authorized representatives, for the purpose of audit and examination, its audit and any books, documents, papers, and records pertinent to this Project.

9. INDEMNIFICATION.

9.1 The Business shall indemnify, defend and hold harmless Subrecipient, Grantee and CDFA against and from any and all claims, judgments, damages, penalties, fines, assessments, costs and expenses, liabilities and losses (including without limitation damages for the loss or restriction on the use of the Property, sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees) resulting or arising during the term of this Business and Employment Commitment Agreement or the loan:

9.1.1 from any condition of the Property, including any building structure or improvement thereon;

9.1.2 from any breach or default on the part of the Business in the performance of any mortgage lien or agreement to be performed pursuant to the terms of the loan, or from any act or omission of the Business or any of their agents, contractors, servants, employees, subloans, licensees or invitees; or

9.1.3 from any accident, injury or damage whatsoever caused to any person occurring during the term of the loan, on the Property or areas adjacent thereto.

10. EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an Event of Default under the Agreement:

10.1 The Business's failure to meet the employment commitments as specified herein;

10.2 The Business's failure to comply with the employment reporting requirements as specified herein;

10.3 The premises of the Business are materially damaged or destroyed by fire or other casualty or cause and the insurance proceeds therefrom are inadequate to rebuild or restore the Premises to their condition immediately prior to such casualty;

10.4 If the Business shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of it or any of its property, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated as bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in an proceeding under any such law;

10.5 A petition, order, judgment or decree shall be entered, without the application, approval or consent of the Business by any court of competent jurisdiction, approving a petition seeking reorganization or approving the appointment of a receiver, trustee or liquidator of the Business of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) days;

10.6 The dissolution, termination of existence, merger or consolidation of the Business or a sale of its assets out of the ordinary course of business without the prior written consent of Grantee;

10.7 Any mechanics', laborers', materialmen's or similar statutory lien, or any notice thereof, shall be filed against the Business and shall not be discharged within thirty (30) day of such filing;

10.8 Failure to remedy an ineligible expenditure of grant funds or to reimburse Subrecipient, Grantee or CDFA for any ineligible costs which are paid from Grant funds.

## 11. REMEDIES UPON DEFAULT.

11.1 In the event that the Business shall default in its commitment to create the required number of employment positions as provided in the Agreement or shall otherwise default under the terms of the Agreement and such default results in the required return of Grant Funds to CDFA, Grantee shall obtain, through its own remedy, a reimbursement of grant fund expenditures from the Business.

11.2 In such an event of default, the amount of CDBG funds subject to recovery in accordance with this paragraph shall be no more than the CDBG loan amount, and shall be based upon the following calculation: The difference between the original number of jobs contained in Paragraph 2.3, less the actual jobs created, multiplied by the minimum standards as stated in Paragraph 2.2.1.

## 12. ADDITIONAL REPRESENTATIONS AND WARRANTIES.

12.1 The Business has obtained or will obtain all necessary approvals of the plans and all necessary permits for the operation of its business from all governmental authorities having jurisdiction over the Project.

12.2 Construction of any improvements for the Project will not violate any zoning, environmental, subdivision, or land use ordinance, regulation or law; the Property conforms and complies in all material respects with covenants, conditions, restrictions, reservations and zoning, environmental land use, and other applicable ordinances, laws, rules and regulations, federal, state or local, affecting the Property.

12.3 No litigation, claims, suits, orders, investigations or proceedings are pending or threatened against the Business or affecting the Property or the Project at law or in equity or before or by any federal, state, municipal or other governmental instrumentality; there are no arbitration proceedings pending under collective bargaining agreements or otherwise; and to the knowledge of the Business there is no basis for any of the foregoing.

12.4 The Business has filed all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments.

12.5 The Business is not contemplating either the filing of a petition under any state or federal bankruptcy or insolvency laws or the liquidating of all or a major portion of its property, and has no knowledge of any person contemplating the filing of any such petition against it.

12.6 The Business shall comply with all federal, state and local laws, regulations, and standards relating to protection or preservation of the environment that are or may become applicable to its activities at the Project Property.

12.7 The Business, and any sub-lessee or assignee of the Business shall be solely responsible for obtaining, at their cost and expense, any environmental permits required for their operations.

## 13. MISCELLANEOUS PROVISIONS.

13.1 The Business shall preserve and maintain the legal existence and good standing of its status and its registration in New Hampshire.

13.2 The Business shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of CDFA, and any attempted assignment or transfer without such consent shall be ineffective, null, void, and of no effect.

13.3 No amendment or modification of this Business & Employment Commitment Agreement shall be effective unless it is in writing and executed by all parties and approved by CDFA.