

**ONLINE BANKING AGREEMENT**

1. Overview and Terms of Acceptance. The following sets forth the terms and conditions governing the use of Capital Bank Corporation's ("Capital Bank" or "Bank") Online Banking and Bill Payment Services (the "Service") for Consumers and Businesses. It also provides certain disclosures for electronic fund transfers, which apply to Consumers only. This Agreement supplements all other agreements with Capital Bank and that cover your Eligible Accounts, including, without limitation, the Signature Card for your Eligible Account and the accompanying Terms and Conditions (a.k.a. Understanding Our Relationship pamphlet) and Service Fee Schedule (collectively, the "Deposit Account Agreement"), which is incorporated herein by this reference, as well as any terms or instructions appearing on the Website when you enroll for, activate, access, or use the Service, and all such agreement shall be considered one agreement. By enrolling for the use of any Service described in this Agreement, or by using or allowing any others to use any Service in relation to any of your accounts, you accept and agree to the terms and conditions of this Agreement, as and if modified from time to time.
  
2. Definitions.
  - (a) "Authorized User" means a person authorized by an Administrator to access a Business Account using the Service with their own login credentials and, if so authorized, to conduct certain transactions.
  - (b) "ATM" means Automated Teller Machine.
  - (c) "Bill Payment" means that certain product that is provided through the Service by which you can generate payments, including by check or electronic means, to third parties.
  - (d) "Business Day" means Monday through Friday, excluding Saturday, Sunday and federal banking holidays.
  - (e) "Business" means a corporation, professional association, limited liability company, partnership, trust, or other business entity or company.
  - (f) "Business Account" means a checking, savings, money market, certificate of deposit, or line of credit owned by a Business.
  - (g) "Consumer" means a natural person who has a Consumer Account for which a Service is requested primarily for personal, family or household purposes.
  - (h) "Consumer Account" means a checking, savings, money market, certificate of deposit, home equity line of credit account owned by a Consumer.
  - (i) "Electronic Funds Transfers" are ATM withdrawals, preauthorized debit or credit transactions, point of sale transactions, transfers to and from your Bank accounts using the Service including bill payment.
  - (j) "Eligible Account" means any Consumer Account or any Business Account held or maintained with us and for which you use any function or feature of the Service.
  - (k) "Insufficient Funds" means that the amount of funds in an account is less than the amount of an item or transaction being presented for payment or execution.
  - (l) "Owner" means the person(s) or entity that owns the account.

- (m) "Service" means the products or services we provide to you under or connection with this Agreement.
- (n) "Signer" means each person who is a signatory on and/or obligor of any Eligible Account as indicated in our records.
- (o) "Unavailable Funds" means that the amount of available funds in your Account is less than the amount of an item or transaction being presented for payment or execution.
- (p) "We," "us" and "our" means or refers to, as the context may require, Capital Bank or any affiliate thereof with which you have established one or more Accounts, and any agent, independent contractor, designee, or assignees that we may, in our sole discretion, involve in the provision of the Services.
- (q) "Website" refers to the website and all other web pages maintained by us, our affiliates or vendors, and accessible through capitalbank-us.com and as related to a Service.
- (r) "You," "your" and "yours" means or refers to each and every person who now or hereafter is a Signer, Administrator, or Authorized User with respect to, or has any interest in, any Eligible Account.

### 3. Account Access and Security.

- (a) Generally. The Service is an internet-based service that provides you with access to your Eligible Accounts and allows you to manage your Eligible Accounts and conduct certain banking activities. Subject to the terms of this Agreement, you will generally be able to access your Eligible Accounts through the Website 7 days a week, 24 hours a day. At certain times, the Service may not be available due to system maintenance or circumstances beyond our control. To qualify for access to the Service, you must have an Eligible Account and a valid e-mail address. You are responsible for and must provide all computers, telephone and other equipment, software (other than any software provided by us) and services necessary to access the Service. We make no warranty as to access to the Service or the Website from outside of the U.S. Further, while we strive to provide complete, accurate, and timely information through the Service, we make no warranty as such.
- (b) Enrollment. To enroll, you must register, which can be done online on the Website. We will send you, either by email or by postal mail, confirmation of our acceptance of your enrollment. By enrolling, you agree to this Agreement.
- (c) First time use. When you first attempt to login to the Website, you will enter in your username and a temporary password. Once you have logged in with your temporary password, you will be prompted to enter a custom password.
- (d) Username. Your username must be 6-25 characters, and may consist of any combination of alpha, numeric and/or special characters (which include only the following: + \_ % @ ! \$ & \* ~). We reserve the right to change this standard at any time.
- (e) Password. Your password must be 8-20 characters, and must consist of at least one alpha, one numeric, and one special character. Special characters consist of the following: \_ % @ ! \$ & \* ~. Your password should be a unique identifier and not associated with any commonly known identification that is known by others to be associated with you. Do not use telephone numbers, proper names, addresses, dates of birth, or the names of your children or pets. You should memorize your password and not share it with anyone, including Capital Bank personnel. We will never ask you for

your password. Do not, under any circumstances, share your password with anyone purporting to be a Capital Bank employee. For security purposes, we recommend that you do not use the same password for other bank products. We may change this standard or require you to change or update your password at any time and without prior notice. If you should forget your password, you may use the “Reset Password ” feature on the Website.

(f) Security Procedures.

- (i) Security of login credentials. You are required to maintain the security of your username and password. For security purposes, it is recommended that you memorize your username and password and do not write it down. You are responsible for keeping your username and password confidential. We recommend that you change your password regularly. We may also require that you use other security and authentication techniques to access your accounts or initiate certain transactions. We may also, at our option, offer you additional, optional security protocols or devices, such as random number generators or one-time passwords, to enhance security.
- (ii) Security of computer. You shall be responsible for maintaining the security of your computer or other device, including from viruses or third parties that may compromise your username or password. You shall ensure that you have signed off from the Service when your session is complete to prevent unauthorized persons from using the Service.
- (iii) Revocation of access/locked out. Upon five unsuccessful attempts to use your password, your access to System will be revoked. To re-establish your authorization to use System, you must contact us to have your password reset or to obtain a new temporary password.
- (iv) Compromised login credentials. If you believe that your password may have been lost or stolen, or someone has accessed the Service, or viewed, downloaded, or deleted electronic records without your permission, or if you suspect any fraudulent activity on your Account, notify us immediately at 1-800-639-5111 or e-mail at [eservice\\_info@capitalbank-us.com](mailto:eservice_info@capitalbank-us.com). In the event of unauthorized use of your username and password, or any other security or authentication technique we utilize, you will be liable for resulting losses, to the extent permitted by law, regardless if such activity was actually authorized by you, unless such losses are the result of our gross negligence or willful misconduct.

- (g) Technical Requirements. We may require the use or activation of specific applications, Internet browser software features, plug-ins and add-ons, such as JavaScript support and "cookies," in order to utilize the Service. Failure to use such requirements may disable your access. You agree that we may place cookies and other identifiers on the computers and Handheld Devices you use to access the Service. Cookies help us confirm your identity and help us keep your transactions secure when you do online banking. We also use cookies for various purposes such as maintaining continuity during an online session, gathering data about your use of the Service and other websites, and optimizing the performance of the Website. We may also acquire information concerning the computers and devices you use to access the Service to facilitate and enhance secure access to the Service. If you are experiencing technical difficulties, contact us at 1-800-639-5111 or e-mail at [eservice\\_info@capitalbank-us.com](mailto:eservice_info@capitalbank-us.com).

- (h) Authorization; Unauthorized Use. You authorize Capital Bank, and its appropriate affiliates or third parties, as applicable, to act on and process instructions, including, without limitation, debits, credits, payments, and transfers, initiated under your username and you agree that you are responsible for actions that may be taken by anyone using the Service after signing in with your username and password, regardless if you actually authorized such action. We are entitled to rely and act upon instructions received under your username and password. We reserve the right to block access to the Service to maintain or restore security to the Website or Service or your access thereto.
- (i) Multiple Signers. If an Eligible Account has more than one Signer, each Signer individually has the right to gain access to the Service and have their own login credentials. Accordingly, each such Signer may provide us with instructions, make any decision, obtain any information or make any request associated with the Eligible Account and through the Service, to the extent allowed by the terms and conditions governing provisions the Eligible Account.
- (j) Authorization to Others. With respect to a Consumer Account, a Signer may not authorize any other person to have access to the Service and we strongly discourage sharing your username or password with anyone. With respect to a Business Account, a Administrator may designate another person to be an Authorized User. All transactions that a Signer, Authorized User, or Administrator performs on an Eligible Account are transactions authorized by all Owners and/or Signers.
- (k) Waiver of requirement for two or more signatures. Any requirement to verify two or more signatures on any item, such as checks, will not apply to electronic transfers, and we will have no liability when making these kinds of transfers under a single verification. This means that any person who is a Signer or Administrator on your Eligible Account is authorized by you, the Owner, and all Signers to have their own login credentials and individually make electronic transfers, even though that person's authority to transfer or withdraw funds from the Owner's account by some other means (e.g., by check) must be exercised jointly with one or more other persons.
- (l) Signatures received via facsimile (fax) or scanned images. If you fax or e-mail a scanned document to us that is signed, you agree that it was your intention that: (i) the fax/scanned signature is an electronic signature under applicable federal and state law, (ii) the fax/scan be an original document, and (iii) you intend on conducting business with us by electronic records, electronic contracts and electronic signatures.
- (i) Business Accounts: (Below terms apply to commercial online banking customers, not part of basic online banking. At some point in time both Commercial Online Banking Agreement and Basic Online Banking Agreements were going to be put in one document. However, COB has its own Online Banking Agreement.) Access and use of Systems. All Signers and/or the Owner shall be responsible for establishing and maintaining the procedures to safeguard against unauthorized access, including anti-virus protection mechanisms and if required, updates to such procedures and monitoring by the Signers and/or Owner of compliance with such procedures as outlined within this Agreement. Signers and/or Owner warrants that no individual will be allowed access to the Service in the absence of proper supervision and safeguards and agrees to maintain the confidentiality of any security procedures or related instructions provided by us in connection with the Service. If you, at any time, has reason to believe or suspect that any such information or instructions have been compromised or disclosed to or accessed by any unauthorized person or used in a manner not authorized by you, you shall notify us immediately, followed by written confirmation. The occurrence of

unauthorized access will not affect any transactions executed in good faith by Bank prior to receipt of such notification and for a reasonable time thereafter.

- (ii) Unauthorized use. Any transaction initiated by “End User/Customer” is deemed on behalf of and accepted by the Signers and/or Owner and the Owner shall be held responsible until such time as Bank has been notified, in writing, that such authority has been revoked or cancelled. We may rely upon and act in accordance with any communication received by us purporting to be a communication by an , Signer, or Authorized User’s on your behalf, without inquiring as to the source of such transmission or identity of such person. The Signers and/or Owner are responsible for all transactions made by any person using an , Signer, or Authorized User’s login credentials, regardless of whether such transaction was authorized and shall discharge and release us from all liability resulting from our execution of transactions initiated.

4. Privacy and Use of Information. We are committed to protecting your privacy. All information gathered from you in connection with using the Service will be governed by the provisions of the [Capital Bank Privacy Policy](#).

5. Warranties. You warrant that: (a) You will be the only user of your username and password; (b) You will not transfer or disclose any of this information to any other person; (c) You will provide true, accurate, current and complete information about yourself as requested and will not misrepresent your identity; and (d) You will (i) not use the Service for any illegal purposes, (ii) comply with all regulations, policies and procedures of networks through which you access and use the Service; (iii) not use the Service for any activity or use that may disrupt the Service or the networks through which you access or use the Service; and (iv) not access or attempt to access any Service account for which you have no access authorization, or duplicate, modify, distribute or display any of the data or files from any such account.

6. Your Use of the Service and Available Features. Subject to the terms and conditions of this Agreement, you may use the Service to access your Eligible Accounts and perform authorized transactions.

(a) Available features.

(i) Account Summary. You will have access to updated balance and transaction information for all Eligible Accounts that you select to view using the Service. In some instances, balances and transaction history may only reflect activity conducted through the close of the previous Business Day.

(ii) Making transfers between your Eligible Accounts.

(1) Description. This feature allows you to transfer funds between your Eligible Accounts. You may make one-time transfers or schedule future or recurring transfers. You may schedule transfers for the purpose of paying loan accounts with Capital Bank. The Service identifies transfers based upon the login ID of the user who made the electronic transfer.

(2) Restrictions. We reserve the right to limit the frequency and dollar amount of transactions between your accounts for security reasons. By federal regulation, you are limited during any statement cycle to six preauthorized or automatic transfers (three of which may be by check, draft or similar order) if the Account is a savings or a savings with limited check writing privileges (money market type) account. Online bill payments and transfers between your Deposit Accounts are considered

preauthorized transfers. Except as otherwise stated on the Website or in our other agreements with you, a funds transfer completed through the Service before the transfer cutoff time on a Business Day will be posted to your Eligible Account the same day. All transfers completed after the transfer cutoff time on a Business Day, or at any time on a day that is not a Business Day, will be posted on the next Business Day. The transfer cutoff time is 10:00 p.m., Eastern Standard Time ("EST").

- (iii) Making transfers to other financial institutions. For funds transfers between financial institutions, those transfers will be processed, completed and posted by the other institution in accordance with its own rules.
- (iv) View and download statements and check images. e-Statements are available for checking, savings, and money market accounts only. Loan accounts are viewed through the Daily Account Snapshot statement. Check images are only available for 90 calendar days. .
- (v) Ordering a stop payment on a check. Stop payment orders may be entered by you on the "Stop Payment" link within the "Account Access" module. Stop Payment orders processed through the Service are subject to the terms and conditions governing stop payment orders as found in your Deposit Account Agreement.
- (vi) Re-order checks. Checks may be re-ordered at any time. Certain check order fees may apply.
- (vii) Paying bills using Bill Pay. You may pay bills and send money to people and entities, subject to the terms and conditions more fully set forth below in Section 8.
- (viii) Export account information. You may export account information to your personal financial management software or other programs, such as Quicken® or , Quickbooks®, Microsoft® Excel or any program that supports a .csv or .txt file export.

(b) Communications.

- (i) E-mail: Except as otherwise provided herein, you may communicate with us via email at [eservice\\_info@capitalbank-us.com](mailto:eservice_info@capitalbank-us.com). Banking services and transactions may not be processed via email. If you send us an e-mail message, we will be deemed to have received it on the following Business Day. You should not rely on e-mail if you need to report an unauthorized transaction from one of your accounts or if you need to order a stop payment on an item. E-mail transmissions outside of the Website are not secure. We advise that you not send or ask for sensitive information such as account numbers or information via e-mail. Never ask or disclose your password in an e-mail.
- (ii) Secure Support. You may also contact us via the Secure Support link within the Service, which is found in the top left corner. Through the Secure Support module, you can communicate with a live representative or send a secure e-mail message.
- (iii) Alerts. We may communicate with you via the Website's account messages module. We will never ask you for your account number or password.

(iv) **Facsimile:** If you should need to send a document via facsimile, the number is (305) 245-9837.

(v) **Mail.** If you should need to contact us by mail, please mail to:

Capital Bank Corporation  
Attn: eBanking Department  
600 N. Homestead Blvd.  
Homestead, FL 33030

- (c) **Fees.** Any applicable fees are disclosed in the Schedule of Fees that accompanies the Deposit Account Agreement, which may be amended from time to time.
- (d) **Primary Account.** You select the accounts you would like to access through the Service. One of the selected accounts must be designated as the “Primary Account.” The Primary Account must be a checking account.
- (e) **Linking and displaying Eligible Accounts.** You may link certain Eligible Accounts to which you are an Owner or Signer. Your linked Eligible Accounts will be displayed on the Website and will link to your Primary Account.
- (f) **Terminating your access to the Service.** We may terminate this Agreement, or any of the Services, by providing thirty (30) days prior written notice to you. We may also terminate or suspend this Agreement, or any of the Services, without notice to you if any of the following occurs: (i) you become insolvent or file, or have filed against you, any bankruptcy or other insolvency, reorganization, liquidation or dissolution proceeding of any kind; (ii) a material adverse change occurs in your business or financial condition; (iii) we have any reason to believe that you have engaged in fraudulent or illegal activity; (iv) you fail to maintain balances in your Accounts sufficient to cover overdrafts; (v) you violate the terms of this Agreement or any financing arrangement with us; (vi) you fail to provide financial or any other information reasonably requested by us; (vii) we determine that it is impractical or illegal to provide one or more of the Services because of changes in Applicable Law; or (viii) we, in good faith, are unable to satisfy ourselves that the use of Service has been properly authorized by the Owner. We will not be required to reinstate or re-activate your access. Also, if you have no Eligible Accounts linked to the Service, or do not use the Service for a period of six (6) consecutive months, we may, in our discretion, terminate your access without prior notice to you. To reactivate the Service you will need to contact us at 800-639-5111. We reserve the right to terminate the Service after inactivity for a period of 12 months. To access the service again you will need to re-enroll for the service. Any recurring Bill Payments setup would also be terminated as a result of inactivity over 12 months Nothing herein prevents us from exercising its termination rights under the Deposit Account Agreement governing your Account.
- (g) **Removal of online access.** For each Eligible Account, you may request removal of online access by calling us at 1-800-639-5111 or by sending a Secure Email from within online banking. .
- (h) **System maintenance.** From time to time, we may perform system maintenance, which may prevent you from accessing the Service. During these times, for banking services you may call Customer Service at 1-800-639-5111 or our telephone banking service at 1-800-639-5111, Option 1, or you may visit a Capital Bank branch.
- (i) **Additional Features.** From time to time, we may introduce new features or make changes to the Service, including the platform or vendor. We will notify you of these new services

or changes. Continuing to use the Service shall constitute your acceptance of such changes and any related rules that may be implemented therewith.

7. Bill Pay.

- (a) Description. Bill Pay is provided through a module within the Website and it allows you to schedule bill payments through the Service. You must be enrolled in the Service to use Bill Pay.
- (b) Bill Payment Account. All payments scheduled through Bill Pay must be done through a designated checking account that is also your Primary Account (the "Bill Payment Account").
- (c) Process. Through Bill Pay, you are able to make current, future, or recurring payments to certain companies or individuals you select. Once a payment is ordered, we will facilitate remitting a paper check or an electronic payment, as applicable for the particular payee, on your behalf.
- (d) Payees. You must provide sufficient information about each payee to properly direct a payment to that payee and permit the payee to identify the correct account to credit with your payment. This information may include the name and address of the payee, and your account number or invoice number with the payee. A payee must have a verifiable U.S. payment address. Occasionally, a payee may choose not to participate in Bill Pay or may require additional information before accepting payments. While we may work with these payees to encourage them to accept an electronic or check bill payment, the payee may elect not to accept such payment or may not be able to process bill payments in a timely manner. In that event, we may decline, upon notice to you, to make future payments to this payee.
- (e) Scheduling Payments. You can schedule payments at any time. Payments are processed beginning at 10:30 pm EST. The date that you enter the payment request is the "Initiation Date." The date that the payment will be sent is the "Send On Date." We recommend all bill payments be scheduled at least five Business Days in advance of the bill's due date.
  - (i) Future, One-Time Payments. Scheduling the timing of payments may depend on a variety of factors, including whether the payment will be sent electronically or by paper check. For electronic payments, the earliest you may schedule a payment is two Processing Days after the Initiation Date. For paper check payments, the earliest you may schedule a payment is four Processing Days after the Initiation Date. You cannot schedule a payment whereby the Send-On Date is a non-Processing Day. When you initiate a payment on a non-Processing Day, the payment is processed on the following Processing Day. For example, if the Initiation Date is a Sunday, and the following Monday is a Federal holiday, the payment order will be processed on the following Tuesday. You may also schedule future payments up to 365-days of the Initiation Date. You must have sufficient available funds in the Bill Payment Account as of the Processing Day immediately preceding the Send-On Date. Future Payments may be changed or cancelled online at any time prior to processing. There is no limit to the number of payments that may be authorized.
  - (ii) Recurring Payments. You may schedule a bill payment to be automatically initiated in a fixed amount on the same date every month by designating the bill payment as a "Recurring Payment." The date on which a bill payment is scheduled to be initiated is referred to below as the Recurring Payment Date.



If the Recurring Payment Date is a date that does not exist in a certain month, the bill payment will be initiated on the last Processing Day of the month. If the Recurring Payment Date falls on a day other than a Processing Day in any month, the bill payment will be initiated on the next Processing Day. For example, if you schedule a payment for the 30th of the month, the bill payment for the month of February will be initiated on February 28th, unless that day is a non-Processing Day, which in that case, it will be initiated on the next available Processing Day. If you schedule a payment whereby the Send-On Date occurs on a non-Processing Day, the payment will be sent on the next Processing Day after the Send-On Date. For example, if a Recurring Payment is scheduled on the 15th of the month and a particular payment falls on a Sunday, the transaction will be processed on the following Monday. Recurring Payments may be changed or cancelled at any time prior to processing.

- (f) Bill Pay stop payment or change instructions. A scheduled payment may be changed or deleted at any time prior to the processing of the payment. Once a payment is processed, you will be unable to change or delete the payment and in order to cancel the payment. If the payment was sent electronically, you will be unable to stop payment or otherwise cancel the payment and you must contact the receiver of the payment. If the payment was sent via check, you will be required to follow the steps for a stop payment request. Stop payment requests may be processed online using the stop payment request webform or you may contact your banker, any Capital Bank office, or calling us at 1-800-639-5111. We make no warranties and we do not guarantee the cancellation of any payment. Accepted stop payments orders are governed by the terms and conditions contained in the Deposit Account Agreement.
- (g) Restrictions on Use.
- (i) Payment Amount Limit. Bank's Bill Payment provider limits the amount of Bill Pay transactions to no more than \$9,999.99 (per transaction). Consumers also have a daily limit of \$19,999.99. If your limit needs to be adjusted please contact your local branch to make your request.
  - (ii) Unsupported Payments. Tax payments, court ordered payments and payments made outside of the U.S. and its territories are not recommended.
  - (iii) Acceptable Payee Addresses Payments can be made to anyone within the U.S. and its territories (APO, FPO, Guam and the U.S. Virgin Islands).
  - (iv) Consumers Accessing Bill Pay Outside the United States You should be able to access Bill Pay anywhere you can access the Service or the Website. The limitation of using the 128-bit encryption outside the U.S. may limit the ability of a consumer to use the product securely.
- (h) Authorization. By furnishing us with the name and address of a payee, you authorize us to follow your payment instructions regarding that payee. In some instances, Bill Pay may submit payments to the best known payee address. When necessary, we will change or reformat your payee account number to match the account number or format required by your payee for electronic payment processing. We reserve the right to refuse to make any bill payment and the right to transfer funds electronically or by mail.
- (i) Insufficient Funds ("NSF") and Overdrafts. If your Bill Payment Account does not have sufficient funds to make a payment on the Send-On Date, your payment order will still be processed and it may create an overdraft. If a bill payment that is remitted thereafter

creates an overdraft, it shall be governed by provisions within the Deposit Account Agreement for overdrafts.

- (j) Customer Use Only. Bill Pay is intended only for use by you as the subscriber of Bill Pay. Any attempt to use Bill Pay to process payments for third parties is prohibited and will be grounds for termination of Bill Pay and your access to the Service. We may use nonaffiliated third parties acting on our behalf to process Bill Pay payments. Bill Pay third-party processors are required to adhere to Capital Bank's strict standards of security and privacy protection. Paper checks processed by nonaffiliated third parties may show that they were drawn on the third-party processor rather than on Capital Bank.
- (k) Account Closed. If your applicable Eligible Account closes or is restricted for any reason, all pending payments associated with the account will be cancelled and it is your sole responsibility to make all pending and future payments.
- (l) Fees. Any fees applicable to Bill Pay are disclosed in the Schedule of Fees that accompanies the Deposit Account Agreement.
- (m) No duty to monitor. We do not have any duty to monitor the payments that are made through Bill Pay. We are only responsible for exercising ordinary care in processing and sending payments upon your authorization in accordance with this Agreement. You assume the entire risk of loss and indemnify and hold us and our affiliates, and each of their respective directors, officers, employees and agents harmless from all loss, liability, claims, demands, judgments, and expenses (including attorney fees) arising out of or in any way connected with: insufficient funds in your Bill Payment Account; delays in mail delivery; changes to the payee's address or account number, unless we've been advised of the change in advance; misuse of Bill Pay; your impropriety; failure of any payee to correctly account for or credit the payment in a timely manner; or any other circumstances beyond our control.
- (n) No Signature Required. Payments sent via Bill Pay do not require signatures and you agree that we may debit your Bill Payment Account to pay any paper drafts that are sent via Bill Pay.
- (o) Multiple Signer Bill Pay Accounts.
  - (i) Consumer Accounts. If a Primary Account has two or more Signers (e.g., joint accounts), each Signer may individually enroll in Bill Pay. Each Signer will need their own unique password. Each individual may terminate his or her enrollment without affecting the other person(s). However, any enrolled person may terminate the entire Bill Pay Service, which will terminate Bill Pay for all enrolled persons on that Bill Payment account.
- (p) Errors. If we do not properly complete a bill payment on time or in the correct amount, we will pay any related late fees or finance charges that you reasonably incur as a result, as long as your account was in good standing with the payee prior to this incident, and if you so request, we will notify the payee that the error was caused by us. We will not be responsible for any charges, fees, or penalties imposed or any other action taken by a payee resulting from a payment that you have not scheduled properly. In addition, we will not be liable if any third party, through whom any bill payment is to be made, fails to properly transmit the payment to the intended payee. We will also not be liable if: (a) there are insufficient available funds or credit availability in your Bill Payment Account; (b) if a legal order directs us to prohibit withdrawals from the Bill Payment Account; (c) if the Bill Payment Account is closed or frozen; or (d) if any part of the electronic funds transfer

system network is not working properly. We will not be liable for indirect, special, or consequential damages arising out of the use of Bill Pay.

- (q) Termination of Bill Pay. If you do not schedule or process a payment through Bill Pay for any 12-month period, we may, at our sole discretion, terminate your use of Bill Pay without prior notice. If you close your Bill Payment Account, you must designate a new checking account as a Bill Payment Account within 5-days or we may terminate Bill Pay without prior notice. If Capital Bank terminates your use of Bill Pay, your online bill payment information will be lost and all pending payments will be cancelled and are your sole responsibility. If you decide to terminate Bill Pay, we strongly suggest that you cancel all future bill payments at the same time that you cancel Bill Pay, either by deleting those payments yourself using Bill Pay or by contacting us. This will ensure that future payments made by you will not be duplicated. We will automatically delete all outstanding payment orders (all individual payments and all recurring payments) once we have been notified that you have terminated Bill Pay.

8. Electronic fund transfer ("EFT").

- (a) Consumer Accounts. EFTs that debit or credit a Consumer checking, savings or money market account are subject to the Federal Reserve Board's Regulation E. The following sets forth such rules, which only apply to Consumer Accounts.

(i) Your liability for unauthorized EFTs:

- (1) If you notify us within two Business Days after learning of the loss or theft of your password, your liability will not exceed the lesser of \$50 or the amount of unauthorized EFTs that occur before notice to us. If you fail to notify us within 2 Business Days after learning of the loss or theft of your password, your liability will not exceed the lesser of \$500 or the sum of (1) \$50 or the amount of unauthorized EFTs that occur within the two Business Days, whichever is less; and (2) the amount of unauthorized EFTs that occur after the close of two Business Days and before notice to us, provided we establish that these EFTs would not have occurred had you notified us within that two-day period.
- (2) You must report an unauthorized EFT that appears on a periodic statement within 60 days of our transmittal of the statement to avoid liability for subsequent transfers. If you fail to do so, your liability will not exceed the amount of the unauthorized EFTs that occur after the close of the 60 days and before notice to us, and that we establish would not have occurred had you notified us within the 60-day period. You may, however, also be liable for the amounts described in the immediately preceding section above.
- (3) You may notify us in person, by telephone, or by mail. The telephone number and address of the person or office to be notified when you believe that an unauthorized EFT has been or may be made are:
  - a. Telephone: 1-800-639-5111, Business Days, 7:30 AM – 6:00 PM EST.
  - b. Mail: Capital Bank Corporation  
Attn: eBanking Department  
600 N. Homestead Blvd.  
Homestead, FL 33030

- (4) We must hear from you no later than 60 days after the date we send the first statement on which the problem or error appeared: We will need:
  - a. Your name and account number;
  - b. A description of the error or the transfer you are unsure about;
  - c. An explanation as to why you believe it is an error or why you need more information; and
  - d. The dollar amount and date of the suspected error.
  
- (5) If you tell us orally, we may require that you send your complaint or question in writing within 10 Business Days. We will notify you with the results of the investigation within 10 Business Days (20 Business Days if the transfer involved a new account) and we will correct any error promptly. If we need more time to conduct our investigation, however, we will notify you of our need for an extension, which may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 Business Days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 Business Days, we may not credit your account. For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 Business Days to credit your account for the amount you think is in error. We will tell you the results within 3 Business Days after completing our investigation. If we decide that there was no error, we will send you an explanation. You may ask for copies of the documents that we used in the investigation.
  - (ii) Stop payment of preauthorized EFTs. You may place a stop payment order on preauthorized EFTs by calling us at the number listed on the statement for your Eligible Account at least 3 Business Days prior to the scheduled transfer date. We require your name and the account number associated with the transfer, and the exact (a) name of the payee, (b) the exact payment amount, and (c) scheduled transfer date. Failure to provide correct and complete information may make it impossible for us to stop payment of the preauthorized EFT. You agree to indemnify and hold us harmless from and against any loss incurred by us as a result of our paying an EFT if any of the information relied upon in the stop payment order is incorrect or incomplete (or as a result of our not paying a preauthorized EFT for which a valid stop payment order is in effect). If we pay a preauthorized EFT despite a valid stop payment order, we may require you to provide us with an affidavit describing in detail the dispute.
  
- (b) Business Accounts.
  - (i) Duty to Review Statements; Reporting of Unauthorized Items; Liability. You are required to promptly review each account statement and you are encouraged to review your accounts daily. Account statements shall be deemed received on the date actually received, though no later than five (5) calendar days after it is mailed and/or made available via e-mail, e-Statements, or posting to the Service, regardless of how or if actually accessed or received.

If you detect an unauthorized transaction, discrepancy, or error (collectively, an “unauthorized item”), you must promptly notify us. The terms, conditions, and time frames relative to reporting unauthorized items and the consequences for failing to promptly notify us of unauthorized items is detailed in your Deposit Account Agreement, which are incorporated herein. By using the Service and continuing to maintain your account, you agree that the terms and conditions, and related time frames, are commercially reasonable.

- (ii) Stop payment of preauthorized EFTs. You may place a stop payment order on preauthorized EFTs by calling the us at the number listed on the statement for your Eligible Account at least 3 Business Days prior to the scheduled transfer date. We require your name and the account number associated with the transfer, and the exact (a) name of the payee, (b) the exact payment amount, and (c) scheduled transfer date. Failure to provide correct and complete information may make it impossible for us to stop payment of the preauthorized EFT. You agree to indemnify and hold us harmless from and against any loss incurred by us as a result of our paying an EFT if any of the information relied upon in the stop payment order is incorrect or incomplete (or as a result of our not paying a preauthorized EFT for which a valid stop payment order is in effect). If we pay a preauthorized EFT despite a valid stop payment order, we may require you to provide us with an affidavit describing in detail the dispute.
  
- (c) Overdrafts. With Business or Consumer Accounts, you must have sufficient funds available in the selected Account (including overdraft protection coverage, if applicable) to cover the amount of the transfers from such account, and any associated overdraft protection fees when we initiate your transfer. (Transfers from an external deposit account are subject to any limitations established by the entity holding such account). We may process transfers that exceed your available balance, but we are not obligated to do so. If we do, you agree to immediately pay the overdraft and any fees incurred, without any requirement of demand from us. We may discontinue permitting overdrafts at any time, without prior notice. The amount of the applicable fees is set forth in the Statement of Fees applicable to the account from which the transfer was to be made. We are under no obligation to notify you if it does not complete a transfer because there are insufficient funds in your account to process a transaction. In all cases, you are responsible for either making alternate arrangements for the transfer or for rescheduling the transfer. If your account has insufficient funds to perform all electronic fund transfers you have requested for a given business day, then:
  - (i) Electronic funds transfers involving currency disbursements, like ATM withdrawal, will have priority;
  - (ii) Electronic fund transfers initiated through the Service that would result in an overdraft of your account may, at our discretion, be cancelled;
  - (iii) In the event the electronic fund transfers initiated through Service that would result in an overdraft of your account are not cancelled, overdraft charges may be assessed pursuant to the terms of the Deposit Account Agreement for that account.

## 9. Alerts.

- (a) Description of alerts. The alerts feature of the Service allows you to request and receive messages about your Eligible Account(s). You may receive alerts through e-mail message(s). Each alert will be effective after set up of the alert parameters, which is contained within the Service.

- (b) E-mail security and delivery timing. You agree that each alert may not be encrypted, and may include information pertaining to you and your account(s). Receipt of any alert may be delayed, or prevented by factor(s) affecting your Internet service provider(s), phone operator(s), and other relevant entities. We neither guarantee the delivery or the accuracy of the contents of any alert. Capital Bank will not be liable for losses or damages arising from (a) non-delivery, delayed delivery, or wrong delivery of any alert; (b) inaccurate content in an alert; (c) your use or reliance on the contents of any alert for any purposes. We reserve the right to terminate any request from you, for any alert, at any time. The information in any alert may be subject to certain time lags and/or delays. You will manage the types and timing of your alerts, and the alerts may be stopped or suspended by you at any time.

10. Electronic statements (e-Statements).

- (a) Description. We offer the delivery and viewing of your periodic Eligible Account statements through a service known as “e-Statements,” which is a module within the Service. e-Statements are an electronic version (PDF) that you can view, save to your computer, or print at your convenience. Any legal notices or disclosures that normally accompany your mailed statement or that we would otherwise deliver to you by mail concerning your Eligible Account may be delivered and/or made available to you electronically through the e-Statements module. We may, at our option, offer you additional options and preferences for the delivery of various types of communications related to your Eligible Accounts or the Service.
- (b) Enrollment for online statements. To enroll, you must first become a user of the Service. Once you are logged in, go to the “e-Statements” section, and click on the “Accept” link below. Once you have enrolled, your e-Statements will delivered to and made available to you and you will no longer receive via mail paper statements or disclosures for the Eligible Accounts you have enrolled in e-Statements.
- (c) Delivery of and Access to e-Statements. Each account cycle, you will receive an e-mail, at the e-mail address designated by you, notifying you of the date when your e-Statements for your designated Eligible Accounts are available (a “notice e-mail”). This notice e-mail will be the only notice you receive of the availability of your e-Statements online, other than alerts that may be posted on the Website. To view your e-Statements, you will need to login to the Service through the Website and once logged in, you will need to click on “Additional Services” ” section, and then the “eStatements” link. Access to your e-Statement will be provided for a period of 18 months from the date of each e-Statement. You may make a copy of an e-Statement for your records by printing it to an attached printer or download it to a storage device. You will need to ensure that your computer software meets the requirements provided on the Website in order to view, print, and/or save your online statement and legal notices. For joint accounts, delivery of a notice e-mail to one Owner shall constitute delivery to all Owners. Delivery of some disclosures in electronic form does not require the Bank to deliver all notices or all notices of a particular type electronically. Disclosures regarding your Eligible Accounts may be attached in an e-mail, contained in the text of an e-mail, posted separately from e-Statements on the Website or contained within an e-Statement, or posted otherwise through the Service or on the Website. Notice e-mails will be considered sufficient notice and received by you regardless of whether you actually access the e-mail or the e-Statements or Disclosures.
- (d) Changes to e-mail address. It is your responsibility to notify us of changes to your e-mail address. You may change your e-mail address by going to the My Settings section of the Service and click on the link titled “Update email options”

- (e) Returned and undelivered e-mails. If a notice e-mail is returned undeliverable, the Bank may, at its discretion, discontinue your e-Statements Service and begin sending your periodic statements and Disclosures to you in paper form at the last postal address shown on our records. If you are in a product that requires you to receive E-Statements to qualify for the benefits of the account, and we are unable to send you notification electronically, paper statements will be reinstated and you will lose any benefits associated with the account. We will use our best efforts to deliver your e-Statements and Disclosures in a timely manner as required by law. We will have no liability if we are unable to deliver them due to, but not limited to, the following circumstances: (i) Your equipment or e-mail is not functioning properly; (ii) Our system is malfunctioning and you are aware of its malfunctioning when you make a request to us; (iii) Circumstances beyond our control (such as, but not limited to, communications failure, energy shortage, act of God, war, riot, fire, civil commotion, terrorist attack, severe or adverse weather conditions or other causes beyond the Bank's control).
- (f) Obtaining e-Statements from the Service. You may obtain e-Statements at any time through the e-Statements module, which is within the "Additional Services" section of the Service.
- (g) Technical Requirements. To use the e-Statements Service, you need to have an operating system and an internet browser that is supported by the Service, which is listed on the Website. You will also need a connection to the Internet, and a current version of Adobe Acrobat Reader or Adobe Acrobat Viewer. If you are unable to view your e-Statements on your computer, you should not enroll in the e-Statements service. In order to keep copies for your records you will need access to a printer or the ability to download information. To print, select the print function on your browser.
- (h) Termination of e-Statements. You may cancel the e-Statements service at any time by going to the "Additional Services" section within the Service and clicking the "Change Statement Options" link. You may also cancel e-Statements by notifying us at 800-639-5111. There is no fee for cancelling. We may also terminate the e-Statements Service for any or all Eligible Accounts at our discretion. The termination of the e-Statements Service in no way affects the validity or legal effect of all e-Statements and Disclosures which have been previously delivered electronically.
- (i) Paper copies. Paper statements may be obtained for a period of seven (7) years. At any time during use of the Service you may request a paper copy of any periodic statement or disclosure that has been delivered electronically. Paper copies may be acquired by contacting your local Capital Bank office. Fees, if any, for paper statements or notices will be charged as disclosed on the applicable Fee Schedule (personal or business) in effect at the time the request is made.
- (j) No Warranties. We make no warranty that the e-Statement service will be available at all times or that e-Statements will not be monitored or read by others if your login credentials or computer are compromised.
- (k) Review of e-Statements. Your use of the e-Statement Service does not in any way alter your obligation to promptly review your e-Statements and to notify us of any error, fraud, forgery, alteration or other irregularity. All provisions as set forth in the Deposit Account Agreement shall continue to apply. Your e-statements will be considered delivered on the date that they are sent to the e-mail address you have designated, regardless of whether you actually receive the notice e-mail.

11. Use of Financial Management Software.

- (a) Description of Financial Management Software. Financial Management Software includes: Quicken®, QuickBooks®, and other software we may identify from time to time on the Website. You are responsible for obtaining a valid and separate license agreement with the provider of your Financial Management Software. Your license agreement with the provider of your Financial Management Software may restrict the duration of your online access; we will not be liable for any such limitations or restrictions.
- (b) Online Banking and Bill Pay access through your Financial Management Software. We may, in our discretion, offer an option to allow you to download information into your Financial Management Software from certain Eligible Accounts. The Eligible Accounts for which these options are available will be identified on the Website from time to time. From time to time, we may add to, modify, or delete any feature of your ability to access the Service through your Financial Management Software at our sole discretion.
- (c) Account information. You understand and agree that not all of the information in your Eligible Accounts can be downloaded into your Financial Management Software; information you can download may not include all of your account activity; statements generated by us are the official record of account transactions, positions and balances, and that the information you download is for tracking purposes only and should not be considered an official record; the account information will not necessarily reflect banking, activities and transactions that have not yet been completed or settled and will only reflect the account information in your Eligible Accounts at the exact point in time that you download the information; account information in your Eligible Accounts may reflect transactions as of a prior time period and may not be current as of the point in time that you download such information; the account information that you download to your Financial Management Software will not be automatically updated by us, and that you will have to update the Eligible Account information by downloading more current information from your accounts; and we are not liable for any loss, damages or expenses of any kind as a result of your reliance upon the Eligible Account information in your Financial Management Software, which, for example, as stated above, may not be the most updated information.
- (d) Security of data transmission and storage. You assume all risk that any information you download and store in your Financial Management Software may be accessed by unauthorized third parties and once downloaded, we are no longer responsible for the security and confidentiality of that information, nor are we responsible for the security and confidentiality of the information if you: (a) use wireless connections to download your account information, in which case you acknowledge such connection may permit other persons to access the information being downloaded, or (b) allow other persons access to your Financial Management Software. Any information that you download is done at your own risk and you are solely responsible for any damage that might occur to the computer (or other electronic device) to which you download any information, or any loss or corruption of data that might occur as a result of the downloading or its storage in a computer or other electronic device.

12. Mobile Banking.

- (a) For Consumers Only. Mobile Banking is an extension of the Service and is available to Consumer Customers who have enrolled in the service. To use Mobile Banking, Consumer Customers are required to use their existing login credentials. All features and services available through the Service are not available via Mobile Banking unless the Website is launched from your mobile device. Mobile Banking will not store your login credentials. You agree to download mobile security software updates when available. Your mobile device will be locked if it is left unattended.



- (b) Procedures. You agree to log off of Mobile Banking at the completion of your online session. In the event your mobile device is lost or stolen and you believe you were not logged off and / or feel your log on credentials may have been compromised, please contact us at [eservice\\_info@capitalbank-us.com](mailto:eservice_info@capitalbank-us.com) or by phone at 1800-639-5111. We also recommend that you contact your wireless service provider to have your device deactivated.
- (c) Fees. We do not charge a fee for using Mobile Banking. Any usual and customary fees the Bank may charge for any other products and or services provided continue to apply. You may incur internet data charges and call costs from your mobile service provider/internet service provider.
13. Disclaimer of warranties; limits on our liability and obligations to you; your agreement to indemnify us against certain losses.
- (a) As Is Basis. You understand and agree that your use of the Service is at your own risk and the Service is provided on an “as is” and “as available” basis.
- (b) Disclaimer of warranties. To the fullest extent permitted by law, we make no warranties of any kind for the Service, either express or implied, including but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. We further disclaim any implied warranties that may arise from course of dealing or performance. We do not warrant that the Service will meet your requirements or expectations, or that the Service will be uninterrupted or error free, that defects will be corrected, or that our Website that makes the Service available is free of viruses or other harmful components, and you agree we are not responsible for any damage to you computer, system, or electronic device that results from the download of any information from the Service or Website or from the viewing or access of the Service or Website. Capital Bank does not make any representation that any content or use of the Service is appropriate or available for use in locations outside of the United States. Notwithstanding our efforts to insure that the System is secure, you acknowledge that the Internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the Internet and potentially can be monitored and read by others and as such, we cannot and do not warrant that all data transfers utilizing the Service, or email transmitted to and from us, will not be monitored or read by others. No advice of information that you obtain from us through the use of the Service or from viewing the Website will create any warranty or representation unless expressly stated in these terms. We are not responsible for determining whether taxes apply to any transaction or for collecting, reporting, or remitting any taxes that arise from any transaction.
- (c) Limits on our liability and obligations to you. Capital Bank and its affiliates, and their respective officers, directors, employees, and agents, shall have no liability to you for any loss, damage, cost or expense arising out of this Agreement, the Service except for liability arising as a direct result of our gross negligence or willful misconduct. In no event shall clerical errors or mistakes in judgments constitute failure to exercise ordinary care, nor shall we have any liability for any indirect, incidental, consequential (including lost profits), special or punitive damages, whether arising in contract or in tort and whether or not the possibility of such damages was disclosed to or could have been reasonably foreseen by us. Under no circumstances shall we be responsible for any liability, loss or damage resulting from any delay in performance of or failure to perform in connection with the Service that is caused by interruption of telephone, internet or communication facilities, delay in transportation, equipment breakdown or mechanical malfunction, electrical, power or computer failure, or other circumstances which are unavoidable or beyond our control. We shall not be liable for failure to perform any of its obligations in connection with the Services or Systems if such performance would result in it being in

breach of applicable law. If we fail to credit any of your Eligible Accounts utilized in connection with the Services or Systems in accordance with the applicable *Deposit Account Agreement* as of the date such credit was earned, upon discovery or notification of such amount, we shall not incur any liability therefore, including any loss resulting from failure by you to invest the amount of funds not properly credited to the Account. You agree that we shall not be liable to the you for any act done or step taken or omitted in good faith, or for any mistake in fact or law, or for anything which it may do or refrain from doing in connection with this Agreement, except resulting from our gross negligence or willful misconduct. Except as otherwise expressly mandated by applicable law, in no case shall we be liable or responsible to you (regardless of the form of the cause of action and regardless of whether the liability or responsibility arises under contract, quasi-contract, tort and/or negligence) in an amount which exceeds the sum of the previous twelve (12) months of all fees actually paid by you to us pursuant to this Agreement.

- (d) Non-conforming transactions. We will not be obligated to honor, in whole or in part, any transaction or instruction if (i) it is not in accordance with any term or condition of this Agreement or any other agreement, policy, or procedure applicable to the relevant Eligible Account; (ii) we believe or have reason to believe the transaction was not properly or validly authorized; (iii) the subject Eligible Account, or funds therein, involves a hold, dispute, restriction or legal process or order that prevents (or we believe prevents) the transaction or instruction; (iv) it would violate any applicable rule, regulation, law, or provision of any risk control program of any federal or state regulatory authority; or (v) we have other reasonable cause not to honor the transaction for our or your protection.
- (e) Force majeure. In no event will Capital Bank be liable for any failure of availability or performance due to scheduled system maintenance or circumstances beyond our control, including, without limitation, power outage, computer virus, system failure, fire, flood, earthquake, or extreme weather.
- (f) Indemnification.
- (i) To the maximum extent permitted by applicable law, you shall indemnify, reimburse, protect, save, hold harmless and defend us, and our directors, officers, employees, agents, successors and assigns ("Indemnities") from and against any and all liability, losses, damages, actions, suits, proceedings, controversies, fees (including reasonable attorneys' fees and investigatory fees) fines or penalties (whether groundless or otherwise and regardless of the form of the cause of action or whether the liability or responsibility arises under contract, quasi-contract, tort and/or negligent) incurred by or asserted against such Indemnities resulting directly or indirectly from:
- (1) Your access to or use of the Service or Website;
  - (2) Your failure to meet your obligations, representations, covenants, warranties, duties or other responsibilities arising under this Agreement or any other claim against the Indemnities by reason of your acts or omissions or of any third party or otherwise;
  - (3) Any and all fines and assessments imposed on us as a result of any infraction or violation of law caused by or attributable to you;
  - (4) Any willful misconduct, negligence, action or omission on the part of any individual who has been listed as an Administrator, Security Administrator, Technical Administrator or Authorized User to act on Owner's behalf; or

- (5) Our performance of our obligations under this Agreement, or from our attempted or actual execution of any request, instruction or order from you, except to the extent such is caused by the gross negligence or willful misconduct of such Indemnities (provided that reliance, without further investigation, on any oral, telephonic, electronic, written or other request, notice or instruction believed in good faith to have been given by Owner will in no event constitute gross negligence or willful misconduct on the part of such Indemnities).
- (ii) You further agree to indemnify, defend, and hold us, our affiliates, officers, directors, employees, consultants, agents, service providers, and licensors harmless from any and all third-party claims, liability, damages, and/or costs (including but not limited to reasonable attorney's fees) arising from a third-party claim, action, or allegation of infringement, misuse, or misappropriation based on information, data, files, or other materials submitted by you to us; any fraud, manipulation, or other breach of this Agreement or the Service; your violation of any law or rights of a third party; or the provision of the Service or use of the Service by you or any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses. You will not settle any action or claims on our behalf without our prior written consent. This indemnification is provided without regard to whether our claim for indemnification is due to the use of the Service by you or your Authorized User.
- (iii) Procedure for Indemnification. If we seeks Indemnification under this Agreement, we shall notify you within thirty (30) days after learning of the occurrence of any event that is asserted to be an indemnifiable event. If such event involves a claim by a third party and you confirm in writing of your responsibility for such liability, if established, you shall be entitled to participate in and assume control over the defense, settlement, adjustment or compromise of such claim. We shall have the right to employ separate counsel in any action or claim and to participate in the defense thereof at your expense if (a) the retention of such counsel has been specifically authorized by you, or (b) you do not notify Bank within twenty (20) days after receipt of a claim notice. You shall obtain our prior written approval before entering into any settlement, adjustment or compromise of such claim or ceasing to defend against such claim, if pursuant to or as a result of such settlement, adjustment, compromise or cessation, injunctive relief or other relief would be imposed against us.

#### 14. Amendments, Notices and Communication.

- (a) Amendments and Notices. We may amend this Agreement from time to time, at our discretion. We may also provide you notices and other information regarding your Eligible Account, or the Service. Communications of such amendments or notices may be communicated via (i) delivery to the address of record as associated with your Eligible Account; (ii) e-mail, to the e-mail address we have on file or you, or (iii) postings or prompts to or delivered through the Website. By continuing to use the Service after we send you notice of any change, you agree to the change. Changes to fees or terms applicable to Eligible Accounts are governed by the Deposit Account Agreement, including notice thereof. Except as otherwise required by law, any change to this Agreement applies only to transactions that occur, or claims that arise, after the change becomes effective. Any notices will be deemed to have been sent on the first Business Day following the date on it. Notices that are held for pick-up or posted on our Website will be deemed to be delivered to, and received by, you at the time that we make it

available for pick-up, display it to you, or send notice in accordance with this Agreement that it is posted on our Website, as applicable. If there is more than one Owner on your Eligible Account, we may send notices to any one of them. The person receiving the notice is responsible for providing copies of notices to all joint Owners, or other persons with access to the applicable Eligible Account. You agree that we may satisfy our obligation to provide you with an annual copy of our Privacy Policy by keeping it available for review on our Website.

- (b) Returned, unclaimed account-related information. Unless otherwise prohibited by the laws governing your Eligible Account, if two or more separate notices are returned or, in the case of electronic notifications, one or more notices are returned as undeliverable, then we may discontinue sending notices to you until you provide a valid postal or e-mail address to us. We have no obligation to retain any notices that are returned to us.
- (c) Notices from you. Any notice you send us will not be effective until we actually receive it and have a reasonable opportunity to act on it. You assume the risk of loss in the mail or otherwise in transit. Unless otherwise stated in this Agreement, notice or other communication required or permitted by this Agreement shall be in writing and to us at:

Capital Bank Corporation  
600 N. Homestead Blvd.  
Homestead, Florida 33030  
Attn: eBanking Department

Any notice you send us will not be effective until we actually receive it and have a reasonable opportunity to act on it.

- (d) Telecommunications; Recordings. You agree that we may electronically monitor and/or record any telephone communications with you. Your use, including by any Authorized User(s), shall be deemed as giving prior consent to these records and it is the Parties' intent that this prior consent be the prior consent to interception of oral communications. We may retain these records for as long as it deems appropriate. The decision to record any telephone conversation shall be solely within our discretion and we have no liability whatsoever for failing to do so.
15. Proprietary rights. Other than your personal account information, all content included or available on the Service, such as advertisements, text graphics, logos, icons, images, audio and video files, and software, is the property of Capital Bank, and/or third parties and is protected by copyrights, trademarks, or other intellectual and proprietary rights. The compilation of all content on the Website and within the Service is the exclusive property of Capital Bank and/or its licensors and is protected by copyright or other intellectual property rights. The trademarks, logos, and service marks displayed on the Service (collectively the "Trademarks") are the registered and unregistered trademarks of Capital Bank or third parties. Under no circumstances may you use copy, alter, modify, or change these Trademarks. Nothing contained on the Website or within the Service should be construed as granting any license, either expressly, by implication or otherwise or right to use any Trademark without the express written permission of Capital Bank, or the third party which has rights to such Trademarks, as appropriate.
16. Entire agreement. In combination with other applicable Capital Bank agreements as described in Section 1 of this Agreement, which this Agreement supplements and all such other agreements are incorporated herein by this reference, this Agreement represents the agreement between you and Capital Bank regarding the Service and merges and supersedes all previous and contemporaneous written or oral agreements and understandings regarding the subject of online access. Each of the rules, terms, and conditions set forth in this Agreement stand alone. Any term or condition contained in this Agreement which is inconsistent with the laws governing the Service

will be deemed to have been modified by us and applied in a manner consistent with such laws. Except as otherwise expressly provided in this Agreement, if any provision of this Agreement is held to be invalid or otherwise unenforceable, the remainder of the provisions will remain in full force and effect and will in no way be invalidated or otherwise affected.

17. Assignment; Successors. You may not assign this Agreement to any other party without our prior written consent. We may assign the Agreement or delegate any or all of our rights and responsibilities under this Agreement to independent contractors or third parties. This Agreement shall bind and benefit the parties and their successors and permitted assigns.
18. Waiver. No waiver shall be valid unless in writing and signed by an authorized officer of Capital Bank. No delay or omission by us in exercising any rights or remedies under this Agreement shall impair such right or remedy or be construed as a waiver. Any single or partial exercise of a right or remedy shall not preclude further exercise of any other right or remedy.
19. No Exclusivity. Nothing contained in this Agreement is intended to create an exclusive relationship and shall not prevent us from providing or receiving any services of the type contemplated herein.
20. Severability. Any provision of this Agreement that is unenforceable shall be ineffective to the extent of such provision, without invalidating the remaining provisions of this Agreement. If performance of any of the obligations under the Agreement would result in violation of Applicable Law, the Agreement shall be deemed amended to the extent necessary to comply therewith.
21. Legal.
  - (a) Choice of law. Except to the extent superseded by federal law, the laws of Florida shall govern the provisions of this Agreement, without regard to choice of law principals.
  - (b) Choice of forum and venue. ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT, AND ANY ACTION FOR ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, SHALL BE BROUGHT, TRIED AND LITIGATED EXCLUSIVELY IN THE STATE COURTS LOCATED IN AND FOR THE COUNTY OF MIAMI-DADE, STATE OF FLORIDA. The aforementioned choice of venue is intended to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties arising out of this Agreement in any jurisdiction other than that specified in this section. Each party hereby waives any right it may have to assert the doctrine of forum *non conveniens* or similar doctrine or to otherwise object to venue with respect to any proceeding brought in accordance herewith, and stipulates that the state or federal courts located in and for Miami-Dade County, State of Florida, shall have *in personam* jurisdiction and venue for the purpose of litigating any dispute, controversy or proceeding arising out of or related to this Agreement.
  - (c) Attorneys' fees and costs. The prevailing Party in any legal action, including any appeal, relating to this Agreement is entitled to reasonable expenses, court costs and attorneys' fees incurred in connection with such.
  - (d) WAIVER OF TRIAL BY JURY. THE PARTIES IRREVOCABLY WAIVE ALL RIGHTS TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT AND TO PERFORM HEREUNDER.