



**U. S. SMALL BUSINESS ADMINISTRATION  
LOAN GUARANTY AGREEMENT  
(DEFERRED PARTICIPATION)**

AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_  
(Lender's name and full address) ("Lender") and the U. S. Small Business Administration ("SBA"), an agency of the United States Government.

WHEREAS, the parties intend for Lender to make, and SBA to guarantee, loans to small business concerns pursuant to section 7(a) of the Small Business Act (15 USC 636(a)), as amended (the "7(a) Loan Program"):

NOW, THEREFORE, the parties agree as follows:

- 1. Application for Guaranty.** This Agreement covers only loans duly approved hereafter for guaranty by SBA subject to SBA Loan Program Requirements ("Loan Program Requirements"), as defined in 13 CFR 120.10 and as amended from time to time, all of which are incorporated by reference into this Agreement.
- 2. Approval of Guaranty.** SBA will either approve the guaranty by issuing a loan authorization or decline the guaranty by written notice to the Lender. After approval, any change in the terms or conditions stated in the loan authorization shall be made in accordance with Loan Program Requirements.
- 3. Closing and Disbursement of Loans.** Lender must close and disburse each loan in accordance with the terms and conditions of the approved loan authorization and Loan Program Requirements. Lender must ensure that a note and all other Loan Instruments (as defined in this paragraph) are properly executed and take such other actions which, consistent with prudent loan-making and closing practices, are required in order to fully protect and preserve the interests of Lender and SBA in the loan. As set forth in the Loan Program Requirements, SBA is entitled, at any time, to examine and obtain copies of all notes, security agreements, instruments of hypothecation, all other agreements and documents (herein, collectively, called "Loan Instruments"), and all other records held by Lender which relate to loans made pursuant to this Agreement.
- 4. Reporting.** Lender must report periodically on the status of all SBA-guaranteed loans in its portfolio, in accordance with Loan Program Requirements. Lender's failure to provide timely, accurate, and complete status information may result in SBA's denial of liability on a loan guarantee (in whole or in part) in the event of loan default.
- 5. Fees Lender Pays to SBA.** Lender must pay SBA such fees as are required by the Loan Program Requirements.

**6. Administration of Loans.** Lender will hold the Loan Instruments and receive all payments of principal and interest unless Lender is required to transfer or assign the note to SBA or a third party at SBA's direction. Lender must service and liquidate all loans made under the 7(a) Loan Program in accordance with the Loan Program Requirements. Except when SBA directs otherwise, all servicing actions will be the responsibility of the holder who must follow accepted standards of loan servicing employed by prudent lenders generally. Borrowers' compliance with SBA's non-discrimination regulations at 13 CFR Part 113, however, is subject to action solely by SBA.

**7. Purchase by SBA.** Subject to the Loan Program Requirements, including, without limitation, 13 CFR 120.520, 120.522 and 120.524, Lender may demand in writing that SBA purchase the guaranteed portion of the outstanding balance of the loan if the borrower does not make payment when due of any installment of principal or interest on any note that is uncured for more than 60 days (or less, if SBA agrees), provided all business personal property securing the loan has been liquidated. SBA purchases of loans sold on the Secondary Market are also governed by the provisions of the Secondary Participation Guaranty Agreement (SBA Form 1086). By making written demand that SBA purchase the guaranteed portion of a loan, Lender will be deemed thereby to certify that the loan has been made, closed, serviced and liquidated in compliance with this Agreement and the Loan Program Requirements, and that this Agreement remains in full force and effect with respect to the loan after the purchase. Purchase by SBA will not waive any right of SBA arising from Lender's negligence, misconduct, or violation of any provision of this Agreement or the Loan Program Requirements. After purchase by SBA, the Lender retains the unguaranteed portion of the outstanding balance of the loan and the Lender is obligated to continue to liquidate the loan unless otherwise directed by SBA.

**8. Prohibited Fees.** Lender must not require certificates of deposit or compensating balances and must not directly or indirectly charge or receive any bonus, fee, commission or other payment or benefit in connection with making or servicing any loan, except as permitted under the Loan Program Requirements. In addition, Lender must not require the Applicant to pay the Lender, a Lender's Associate, or any party designated by either, any fees or charges for goods or services, including insurance, as a condition for obtaining an SBA-guaranteed loan.

**9. Sharing of Repayment Proceeds and Collateral.** Lender must not acquire any preferential security, surety or insurance to protect its unguaranteed interest in a loan. All repayments, security or guaranty of any nature, including without limitation rights of set off and counterclaim, which Lender or SBA jointly or severally may at any time recover from any source whatsoever or have the right to recover on any guaranteed loan, must repay and secure the interests of Lender and SBA in the same proportion as such interest bears respectively to the unpaid balance of the loan. Lender must notify SBA of any loan or advance by Lender to a borrower subsequent to a guaranteed loan. After providing such notice, if SBA determines it is necessary and after obtaining any borrower's consent (if required), Lender must enter into a written agreement with SBA providing for the

application of collateral (or proceeds realized therefrom) to the respective loans in a manner satisfactory to the parties hereto.

**10. Payment of Expenses.** Subject to paragraph 8 above, all ordinary expenses of making, servicing, liquidating, and litigating a guaranteed loan will be paid by, or be recoverable from, the borrower. All reasonable expenses incurred by Lender or SBA which are not recovered from the borrower will be shared ratably by Lender and SBA in accordance with their respective interests in any such loan, subject to Loan Program Requirements.

**11. SBA Right to Purchase.** Notwithstanding any provision of any agreement between SBA and Lender and in accordance with 13 CFR 120.520(a), SBA has the absolute right at any time to purchase the guaranteed portion of any loan in SBA's sole discretion, whether in default or not, with or without a request from Lender. Within 15 days of the Lender's receipt of SBA's written notice of its intent to purchase the guaranteed portion, Lender must deliver to SBA a certified transcript of the loan account showing date and amount of each advance or disbursement and repayment and provide SBA with any other documents required by Loan Program Requirements. After receipt and review of these documents, SBA will pay Lender the guaranteed portion of the amount then owing on the loan in accordance with the Loan Program Requirements.

**12. Assignment of Interest in Loan and Other Conveyances.**

A. Lender may sell or transfer, in whole or in part, its interest in any guaranteed loan, including transfers pursuant to SBA Form 1086, in accordance with Loan Program Requirements. (13 CFR 120.432, 120.433 and 120.613)

B. Nothing in this Agreement prohibits Lender, with SBA's prior written consent which SBA may withhold in its sole discretion, from selling an entire loan or loan portfolio to another participating Lender provided that Lender complies with the Loan Program Requirements, including, without limitation, 13 CFR 120.430 through 120.433.

C. Nothing in this Agreement prohibits Lender, with SBA's prior written consent which SBA may withhold in its sole discretion, from securitizing a loan or loans provided that Lender complies with the Loan Program Requirements, including, without limitation, 13 CFR 120.420 through 120.428.

D. Except as set forth in 13 CFR 120.435, Lender must obtain SBA's prior written consent to all pledges of any portion of a 7(a) loan, which consent SBA may withhold in its sole discretion. (13 CFR 120.434)

**13. Termination.**

A. Either party may terminate this Agreement upon not less than 10 days written notice by certified mail to the other party. Termination will not affect the guaranty of any SBA-guaranteed loan previously authorized by SBA. It is understood and agreed that the Lender's obligation to continue to comply with Loan Program Requirements with respect to any SBA-guaranteed loan previously authorized by SBA, including but not limited to

the servicing and liquidation of the Lender's SBA-guaranteed loan portfolio, and SBA's right to set off any obligations owed by Lender to SBA, shall survive termination of this Agreement unless otherwise notified by SBA in writing. If this Agreement is terminated by either Lender or SBA, Lender hereby agrees that SBA may in its sole discretion transfer some or all of the SBA-guaranteed loan portfolio and/or the servicing and liquidation of the SBA-guaranteed loan portfolio and related fees or income to SBA or another entity approved by SBA. If SBA requires transfer of Lender's SBA-guaranteed loan portfolio, Lender must cooperate with SBA to transfer responsibility for servicing and liquidating its SBA-guaranteed loan portfolio.

B. Lender may terminate the guaranty as to any unassigned loan guaranteed hereunder at any time prior to purchase by SBA upon notice to SBA. The guaranty of any loan will be automatically terminated if demand for SBA to purchase or a request to extend the maturity is not received by SBA within one year after the maturity of the note.

**14. SBA Right of Setoff.** SBA may set off any obligations owed by Lender to SBA, including but not limited to fees, penalties, repairs and denials, from any amounts owed by SBA to Lender, including but not limited to guaranty purchase amounts.

**15. Assignment.** Lender may only assign or transfer its rights and obligations under this Agreement in accordance with Loan Program Requirements.

**16. Interpretation of this Agreement.**

A. This Agreement is subject to the Small Business Act and the Loan Program Requirements and will be interpreted and construed subject to, and to give full effect to, the broad scope of SBA's power and authority over Lender under that Act and those requirements. Lender consents and agrees to all rights and remedies available to SBA under the Small Business Act and the Loan Program Requirements, as each of those are amended from time to time, and any other applicable law.

B. Lender certifies that it is in compliance with requirements of the Small Business Act, the Loan Program Requirements and any other applicable law and it will maintain compliance.

C. Lender understands that SBA's rights and powers under the Small Business Act and the Loan Program Requirements exist independent of this Agreement, and further that nothing in this Agreement may be asserted against SBA under any circumstances to delay or prevent SBA's full exercise of its regulatory authority over Lender.

D. Lender agrees to hold SBA harmless for any action taken by SBA in enforcing this Agreement, the Small Business Act and the Loan Program Requirements against Lender.

E. Lender agrees that any modification to this Agreement to be asserted against SBA or any exemption to be claimed from any provision of the Small Business Act or the Loan Program Requirements is invalid, null and void unless it is made in writing by an official

of SBA authorized to grant such modification or exemption and was made after full disclosure to SBA of all material facts and circumstances.

F. This Agreement is to be interpreted under and construed in accordance with federal law.

G. This Agreement is only for the benefit of the parties signing below and is not to be interpreted as being for the benefit of any third party.

This Agreement will inure to the benefit of, and be binding upon, the parties and their authorized successors and assigns.

IN WITNESS WHEREOF, Lender and SBA have caused this Agreement to be duly executed the date first above written.

(SEAL)

\_\_\_\_\_  
Name of Lender

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

ATTESTED BY: \_\_\_\_\_

U.S. SMALL BUSINESS ADMINISTRATION

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

(Lender shall execute and submit the original to the SBA Field Office.)