U.S. Small Business Administration

**AUTHORIZATION**

**(SBA *Small Loan Advantage* LOAN – For use by PLP Lenders only)**

SBA Loan# **[Number]**

U.S. Small Business Administration                                          Lender:

**[SBA Field Office’s Name]                                                           [Lender’s Name]**

**[Address]**                                                                                         **[Address]**

**[City, State, Zip]**                                                                             **[City, State, Zip]**

SBA approves, under Section 7(a) of the Small Business Act as amended, Lender’s application, received (Date Accepted), for SBA to guarantee **[Percent Guaranteed]** of a Small Loan Advantage loan in the amount of $**[Loan Amount]** to be made by Lender to:

Borrower:           **[Name, dba, Address, City, State, Zip for each borrower]** `

1. **The GUARANTEE FEE IS: $[amount]**

Lender must pay the guarantee fee within 90 days of the approval date of this Authorization. Failure to timely pay the guarantee fee will result in cancellation of the SBA guarantee. The 90-day deadline may not be extended. Lenders are required to make their payments electronically. Payment can be made at [www.pay.gov](http://www.pay.gov) or by ACH if they have previously enrolled with the SBA. No part of the guarantee fee is refundable if Lender has made any disbursement. Lender may collect this fee from Borrower after initial disbursement of Loan; however, when an escrow closing is used, Lender may not collect the fee until all Loan funds have been disbursed to the Borrower from the escrow account. Borrower may use Loan proceeds to reimburse Lender for the guarantee fee.

For loans with a maturity of 12 months or less, Lender must pay the guarantee fee within 10 business days from the date the SBA loan number is assigned and before signing this Authorization. No guarantee exists if Lender has not timely paid the guarantee fee in full. SBA will not refund the guarantee fee after the date of this Authorization except as provided in SOP 50 10. Payment of the guarantee fee is not contingent upon disbursement. Lender may collect this fee from Borrower upon receipt of the SBA loan number. Borrower may use loan proceeds to reimburse Lender for the guarantee fee.

**For loans of $150,000 or less**, Lender may retain 25% of the guarantee fee but must remit the remainder to SBA.

B. **ONGOING GUARANTEE FEE (LENDER’S ANNUAL SERVICE FEE)**

Lender agrees to pay SBA an ongoing guarantee fee equal to 0.550 of one percent per year of the guaranteed portion of the outstanding balance. Lender may not charge or otherwise pass through this fee to Borrower.

C. **IT IS LENDER’S SOLE RESPONSIBILITY TO:**

1. Close the Loan in accordance with the terms and conditions of this Authorization.

2. Obtain valid and enforceable Loan documents, including obtaining the signature or written consent of any obligor's spouse if such consent or signature is necessary to bind the marital community or create a valid lien on marital property.

3. Retain all origination, closing, servicing and liquidation documents. Lender must submit these documents, to SBA for review if Lender requests SBA to honor its guarantee on the Loan, or at any time SBA requests the documents for review.

4. Lender must have a valid SBA Loan Guarantee Agreement (SBA Form 750 and 750B for short term loans, if applicable), and a valid Supplemental Guarantee Agreement – Preferred Lenders Program (PLP) (SBA Form 1347).

D. **CONTINGENCIES—**SBA issues this Authorization in reliance on representations in the Loan application, including supporting documents. The guarantee is contingent upon Lender:

1. Having paid the full guarantee fee in the time and manner required by this Authorization and the SBA Standard Operating Procedures (SOP) 50 10;

2. Complying with the current SOP 50 10 and all applicable appendices;

3. Making first disbursement of the loan no later than **[number of months]** months, and complete disbursement no later than **[number of months]** months, from the date of this Authorization. In all cases, the loan must be fully disbursed within 48 months of approval or any undisbursed portion will be cancelled;

4. Having no evidence since the date of the Loan application, or since any preceding disbursement, of any un-remedied adverse change in the financial condition, organization, management, operation, or assets of Borrower, Operating Company, or its Associates which would warrant withholding or not making any further disbursement; and

5. Satisfying all of the conditions in this Authorization.

E. **NOTE TERMS**:

Lender must have borrower execute a Note containing the following repayment terms:

**Maturity**: This Note will mature in **[number of years/months]** from date of Note.

**Repayment Terms: [Insert Interest Rate/Repayment Terms]**

Lender may use the SBA Note (SBA Form 147) or its own note form. If the lender uses its own note form, the lender must ensure that the note is legally enforceable and assignable, has a stated maturity and is not payable on demand. In addition, if the lender uses its own note form, the note must include the following language: *“When SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.”*

The interest rate identified in the Note may not be changed during the life of the loan unless changed in accordance with SOP 50 10.

Lender will apply each installment payment first to pay interest accrued to the day Lender received the payment, then to bring principal current, then to pay any late fees, and will apply any remaining balance to reduce principal.

Loan Prepayment: Notwithstanding any provision in this Note to the contrary:

Borrower may prepay this Note. Borrower may prepay 20 percent or less of the unpaid principal balance at any time without notice. If Borrower prepays more than 20 percent and the Loan has been sold on the secondary market, Borrower must: a. Give Lender written notice; b. Pay all accrued interest; and c. If the prepayment is received less than 21 days from the date Lender received the notice, pay an amount equal to 21 days interest from the date lender received the notice, less any interest accrued during the 21 days and paid under b. of this paragraph. If Borrower does not prepay within 30 days from the date Lender received the notice, Borrower must give Lender a new notice.

**Late Charge:** If a payment on this Note is more than **[insert # of days – 10 days minimum]** days late, Lender may charge Borrower a late fee of up to **[insert % to be charged – may not exceed 5%]** of the unpaid portion of the regularly scheduled payment.

**Subsidy Recoupment Fee:** For all loans with a maturity of 15 years or more, when in any one of the first three years following the date of first disbursement Borrower voluntarily prepays more than 25% of the outstanding principal balance of the loan, Borrower must pay to Lender on behalf of SBA a prepayment fee for that year as follows: during the first year, 5% of the total prepayment ; during the second year, 3% of the total prepayment; and, during the third year, 1% of the total prepayment.

F. **USE OF PROCEEDS**

Lender must document that borrower uses loan proceeds for the purposes stated in this Authorization as specified below. Lender must use the same closing and disbursement documentation and processes that it uses on its similarly-sized, non-SBA guaranteed commercial loans to verify the disbursement and is not required to use SBA Form 1050. Lenders must use commercially reasonable and prudent practices to verify that disbursement is in accordance with this Authorization.

**[Show specific uses for which loan is authorized, broken down by category (in accordance with ETran Use of Proceeds).  Total of all categories must equal total loan amount.]**

G. **COLLATERAL CONDITIONS:**

Lender must obtain all required collateral and must meet all other required conditions before first disbursement.

**[List all collateral that will secure loan, including personal guarantees, standby agreements, etc. Specify lien position and title evidence required.]**

Lender may use its own form of guarantee or the SBA form 148 and/or 148L.If the lender uses its own guaranty form, the guaranty must include the following language: *“When SBA is the holder, the Note and this Guarantee will be construed and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Guarantee, Guarantor may not claim or assert any local or state law against SBA to deny any obligation, defeat any claims of SBA, or preempt federal law.”*

With respect to collateral taken, lenders must use commercially reasonable and prudent practices to identify collateral items, which would include conformance with procedures at least as thorough as those used for their similarly-sized non-SBA guaranteed commercial loans.

Lenders may follow their internal collateral policy for similarly-sized non-SBA guaranteed commercial loans, including life insurance.

Lender must obtain a list of all equipment and fixtures that are collateral for the Loan. For items with a unit value of $5,000 or more, the list must include a description and serial number, if applicable.

H. **ADDITIONAL CONDITIONS**

1. **Borrower, Guarantor and Operating Company Documents**

a. Prior to closing, Lender must obtain from Borrower, Guarantor and Operating Company a current (within 90 days) copy of each of the following as appropriate:

(1) **Corporate Documents including Certificate of Good Standing**

(2) **Limited Liability Company (LLC) Documents**

(3) **General Partnership Documents**

(4) **Limited Partnership Documents**

(5) **Limited Liability Partnership (LLP) Documents**

(6) **Trustee Certification**

(7) **Trade Name**

2. **Certifications and Agreements**

Prior to disbursement, Lender must require Borrower and Operating Company to certify the relevant conditions detailed in the Borrower’s Certification Form attached as Appendix A. Lender may use this sample form as the basis for obtaining all required certifications.

3. **Documentation Requirements/Additional Conditions:**

Prior to disbursement, Lender must:

Obtain required (maximum insurable value) hazard insurance on all assets taken as collateral, as set forth in SOP 50 10.

Make the required flood hazard determination and obtain required flood insurance pursuant to the flood insurance requirements in SOP 50 10.

Provide copies of UCC searches dated within 30 days of closing and evidence that the intended lien position was verified for all assets taken as collateral.

For loans over $250,000 when the loan is secured by commercial real estate, obtain an appraisal that meets the requirements of SOP 50 10.

When loan proceeds are to be used for the construction of a new building, or for an addition to a building, the construction must conform with the National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations of New Buildings (NEHRP) or a building code that SBA has identified as having substantially equivalent provisions. This compliance may be evidenced by a certificate issued by a licensed building professional familiar with these standards or other evidence as set forth in SOP 50 10.

For any loan involving construction of more than $10,000, require borrower and contractor to execute SBA Form 601, Applicant's Agreement of Compliance.

Obtain SBA Form 159(7a) for any assistance paid for in connection with the loan application.

Require appropriate environmental reviews and compliance. Lenders must follow the environmental requirements in SOP 50 10. Lenders may not request a loan number for a loan that will be secured by collateral that will not meet SBA’s environmental requirements or that will require use of a non-standard indemnification agreement.

Lender to document any required Equity Injection.

**[List all required equity injection and the form of the injection (cash, assets, equity, standby debt, etc.]**

Lease – Current lease(s) on all business premises where collateral is located with terms, including options, at least as long as the term of the Loan.

In accordance with SOP 50 10, Lender should obtain a written agreement from all Lessors (including sub-lessors) agreeing to: (1) Subordinate to Lender the Lessor’s interest, if any, in this property; (2) Provide Lender written notice of default and reasonable opportunity to cure the default; and (3) Allow Lender the right to take possession and dispose of or remove the collateral.

In accordance with SOP 5010, verification of LPR or legal alien status must be received by the lender prior to submission of the request for Guaranty.

Other Special Conditions:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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ADMINISTRATOR

SMALL BUSINESS ADMINISTRATION

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By: **[Name, Title]** Date [**Approval Date]**

Preferred Lender, as Lender and as an Agent of and on behalf of the SBA for the purpose of executing this Authorization.

LENDER

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_            \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

     (Authorized Signature)                                             (Date)

    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

    (Name Print/Title)

**APPENDIX A**

**B**ORROWER'S **C**ERTIFICATION

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

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

A. Borrower and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("**Operating Company**") certify that:

[ \_\_\_\_\_\_\_ ] 1. **Receipt of Authorization (MANDATORY)** - Borrower and Operating Company have received a copy of the Authorization for this Loan from Lender, and acknowledge that:

a. The Authorization is not a commitment by Lender to make a loan to Borrower;

b. The Authorization is between Lender and SBA and creates no third party rights or benefits to Borrower;

c. The Note will require Borrower to give Lender prior notice of intent to prepay.

d. If Borrower defaults on Loan, SBA may be required to pay Lender under the SBA guarantee. SBA may then seek recovery of these funds from Borrower. Under SBA regulations, 13 CFR Part 101, Borrower may not claim or assert against SBA any immunities or defenses available under local law to defeat, modify or otherwise limit Borrower’s obligation to repay to SBA

any funds advanced by Lender to Borrower.

e. Payments by SBA to Lender under SBA’s guarantee will not apply to the Loan account of Borrower, or diminish the indebtedness of Borrower under the Note or the obligations of any personal guarantor of the Note.

[ \_\_\_\_\_\_\_ ] 2. **Adverse Change (MANDATORY) -** That there has been no adverse change in Borrower's (and Operating Company) financial condition, organization, operations or fixed assets since the date the Loan application was signed.

[ \_\_\_\_\_\_\_ ] 3. **Child Support (MANDATORY) -** No principal who owns at least 50% of the ownership or voting interest of the company is delinquent more than 60 days under the terms of any (1) administrative order, (2) court order, or (3) repayment agreement requiring payment of child support.

[ \_\_\_\_\_\_\_ ] 4. **Current Taxes (MANDATORY)-** Borrower and Operating Company are current (or will be current with any loan proceeds specified for eligible tax payments) on all federal, state, and local taxes, including but not limited to income taxes, payroll taxes, real estate taxes, and sales taxes.

[ \_\_\_\_\_\_\_ ] 5. **Environmental (MANDATORY)** — For any real estate pledged as collateral for the Loan or where the Borrower or Operating Company is conducting business operations (collectively “the Property”):

(a) At the time Borrower and Operating Company submitted the Loan application, Borrower was in compliance with all local, state, and federal environmental laws and regulations pertaining to reporting or clean-up of any hazardous substance, hazardous waste, petroleum product, or any other pollutant regulated by state or federal law as hazardous to the environment (Contaminant), and regarding any permits needed for the creation, storage, transportation or disposal of any Contaminant;

(b) Borrower and Operating Company will continue to comply with these laws and regulations;

(c) Borrower and Operating Company, and all of its principals, have no knowledge of the actual or potential existence of any Contaminant that exists on, at, or under the Property , including groundwater under such Property other than what was disclosed in connection with the Environmental Investigation of the Property;

(d) Until full repayment of Loan, Borrower and Operating Company will promptly notify Lender if it knows or suspects that there has been, or may have been, a release of a Contaminant, in, at or under the Property, including groundwater, or if Borrower or Operating Company or such property are subject to any investigation or enforcement action by any federal, state or local environmental agency (Agency) pertaining to any Contaminant on, at, or under such Property, including groundwater.

(e) As to any Property owned by Borrower or Operating Company, Borrower or Operating Company indemnifies, and agrees to defend and hold harmless Lender and SBA, and any assigns or successors in interest which take title to the Property, from and against all liabilities, damages, fees, penalties or losses arising out of any demand, claim or suit by any Agency or

any other party relating to any Contaminant found on, at or under the Property, including groundwater, regardless of whether such Contaminant resulted from Borrower’s or Operating Company's operations. (Lender or SBA may require Borrower or Operating Company to execute a separate indemnification agreement).

[ \_\_\_\_\_\_\_ ] 6. **Credit Card Debt (Mandatory for Refinancing Credit Card Debt)** - The total of the payments by this loan on Borrower’s credit card obligation(s) is not greater than the total of Borrower’s specific business-related purchases charged to the credit card(s).

B. Borrower and Operating Company certify that they will:

[ \_\_\_\_\_\_\_ ] 1. **Reimbursable Expenses**- (**MANDATORY)** Reimburse Lender for expenses incurred in the making and administration of the Loan.

[ \_\_\_\_\_\_\_ ] 2. **Books, Records, and Reports (MANDATORY)**

a. Keep proper books of account in a manner satisfactory to Lender;

b. Furnish [check *one if appropriate:* 􀂆 compiled **-** 􀂆 reviewed **-** 􀂆 audited] year-end statements to Lender within **\_\_\_\_\_\_\_** days *[120 days, if not filled in]* of fiscal year end;

c. Furnish additional financial statements or reports whenever Lender requests them;

d. Allow Lender or SBA, at Borrower’s or Operating Company’s expense, to:

1) Inspect and audit books, records and papers relating to Borrower's and Operating Company’s financial or business condition; and

2) Inspect and appraise any of Borrower's and Operating Company’s assets; and

3) Allow all government authorities to furnish reports of examinations, or any records pertaining to Borrower and Operating Company, upon request by Lender or SBA.

[ \_\_\_\_\_\_\_ ] 3. **Equal Opportunity (MANDATORY) -** Post SBA Form 722, Equal Opportunity Poster, where it is clearly visible to employees, applicants for employment and the general public.

[ \_\_\_\_\_\_\_ ] 4. **American-made Products (MANDATORY) -** To the extent practicable, purchase only American-made equipment and products with the proceeds of the Loan.

[ \_\_\_\_\_\_\_ ] 5. **Taxes (MANDATORY)** - Pay all federal, state, and local taxes, including income, payroll, real estate and sales taxes of the business when they come due.

**Occupancy MANDATORY if building purchased, renovated, or constructed with loan proceeds:**

[ \_\_\_\_\_\_\_ ] 6. **Occupancy** - Occupy at least 51% of the total Rentable Property and may lease up to 49% for business or residential use. Borrower will not use Loan proceeds to improve or renovate any of the Rentable Property leased to third parties. Borrower may provide up to 49% of the Rentable Property to be occupied by Borrower for use by a resident owner or manager only if the nature of the business demands it.

[ \_\_\_\_\_\_\_ ] 7. **Occupancy** - Comply with the following provisions: (a) Borrower must lease 100% of the Rentable Property to Operating Company; (b) Operating Company may sublease up to 49% of the Rentable Property for business or residential use; and (c) Operating Company will not use Loan proceeds to improve or renovate any of the Rentable Property that is to be sub-leased. Operating Company may provide up to 49% of the Rentable Property occupied by Operating Company for use by a resident owner or manager only if the nature of the business demands it.

[ \_\_\_\_\_\_\_ ] 8. **Occupancy** - Occupy at least 60% of the Rentable Property; (b) Continue to occupy at least 60% of the Rentable Property for the term of the Loan; (c) Lease long term no more than 20% of the Rentable Property to one or more tenants for business or residential use; (d) Plan to occupy within three years some of the remaining Rentable Property not immediately occupied or leased long term; (e) Plan to occupy within ten years all of the Rentable Property not immediately occupied or leased long term; and (f) will not use Loan proceeds to improve the space not immediately occupied by

Borrower to enhance the leasehold value to tenant beyond that necessary for the Borrower's intended use as a future occupant under (d) and (e) above, or to enhance the leasehold value to a tenant under (c) above. However, Borrower may provide up to 49% of the total Rentable Property occupied by Borrower for use by a resident owner or manager only if the nature of the business demands it.

[ \_\_\_\_\_\_\_ ] 9. **Occupancy** - Comply with the following provisions: (a) Borrower must lease 100% of the Rentable Property to Operating Company; (b) Operating Company must immediately occupy at least 60% of the Rentable Property; (c) Operating Company must continue to occupy at least 60% of the Rentable Property for the term of the Loan; (d) Operating Company will lease long term no more than 20% of the Rentable Property to one or more tenants; (e) Operating Company must plan to occupy within three years some of the remaining Rentable Property not immediately occupied or leased long term; (f) Operating Company must plan to occupy within ten years all of the Rentable Property not immediately occupied or leased long term; and (g) Operating Company will not use Loan proceeds to improve the space not immediately occupied by Operating Company to enhance the leasehold value to tenant beyond that necessary for the Operating Company's intended use as future occupant under (e) and (f) above, or to enhance the leasehold value to a tenant under (d) above. However, Operating Company may provide up to 49% of the total Rentable Property occupied by Operating Company for use by a resident owner or manager only if the nature of the business demands it.

C. Borrower and Operating Company certify that they will not, without Lender’s prior written consent:

[ \_\_\_\_\_\_\_ ] 1. **Distributions (MANDATORY)** - Make any distribution of company assets that will adversely affect the financial condition of Borrower and/or Operating Company.

[ \_\_\_\_\_\_\_ ] 2. **Ownership Changes (MANDATORY)** - Change the ownership structure or interests in the business during the term of the Loan.

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

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

[ \_\_\_\_\_\_\_ ] 5. **Location Limitation (OPTIONAL) -** Acquire by purchase or by lease, any additional locations.

[ \_\_\_\_\_\_\_ ] 6. **Limitation on Compensation (OPTIONAL) -** Allow total annual salaries, withdrawals or other forms of remuneration to officers or owners of Borrower and Operating Company, and their immediate family members, to exceed $**\_\_\_\_\_\_\_\_\_\_\_\_\_**.

[ \_\_\_\_\_\_\_ ] 7. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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(Borrower)

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date \_\_\_\_\_\_\_\_\_\_

(Operating Company) Date

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_