



**U. S. SMALL BUSINESS ADMINISTRATION  
COMMUNITY ADVANTAGE PILOT PROGRAM  
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 the Community Advantage Pilot Program (CA Pilot Program):

NOW, THEREFORE, the parties agree as follows:

**1. Definitions.** The following definitions apply to this Agreement:

- a. "CA Pilot Program" means the Community Advantage Pilot Program.
- b. "CA loan" means any loan approved under the CA Pilot Program.
- c. "CA Loan Program Requirements" means Loan Program Requirements as defined in 13 CFR 120.10, the Federal Register notice announcing the pilot (76 FR 9626, February 18, 2011), and the Community Advantage Participant Guide, each as amended from time to time.

**2. Application for Guaranty.** This Agreement covers only CA loans duly approved hereafter for guaranty by SBA. Lender's CA loans are subject to the CA Loan Program Requirements, all of which are incorporated by reference into this Agreement.

**3. 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 the CA Loan Program Requirements.

**4. 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 the CA Loan Program Requirements. Lender must ensure a note and all additional instruments are properly executed and take such other actions which, consistent with prudent closing practices, are required in order to fully protect or preserve the interests of Lender and SBA in the loan. As set forth in the CA Loan Program Requirements, SBA is entitled at any time, after written notice, 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.

**5. Reporting.** Lender must report periodically on the status of all CA loans in its portfolio, in accordance with the CA Loan Program Requirements. Lender also must comply with all of the CA Loan Program Requirements for reporting, including but not limited to, an annual report (including audited financial statements and management and technical assistance milestones), and other status reports as requested by SBA. Lender will be subject to a civil monetary penalty set forth in 13 CFR 120.465 for late filed reports. SBA may not be obligated to purchase the guaranteed percentage of the outstanding balance of a CA loan if SBA determines that Lender failed to provide timely and accurate status information.

**6. Fees Lender Pays to SBA.** Lender must pay SBA such fees as are required by the CA Loan Program Requirements. For example: a one-time guaranty fee for each CA loan that Lender makes (13 CFR 120.220), an annual service fee on the outstanding principal balance of the guaranteed portion of each CA loan (13 CFR 120.220(f)), and any authorized and applicable fees SBA or its contractor may charge to cover the costs of examinations and reviews and, if assessed by SBA, fees for other lender oversight activities (13 CFR 120.1070).

**7. 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. Lender must service and liquidate all loans made under the CA Pilot Program in accordance with the CA Loan Program Requirements. All servicing actions will be the responsibility of the holder who must follow accepted standards of loan servicing employed by prudent lenders generally, except that borrowers' compliance with SBA's non-discrimination regulations at 13 CFR Part 113 is subject to action solely by SBA.

**8. Purchase by SBA.** Subject to the CA Loan Program Requirements, including, without limitation, 13 CFR 120.520 and 120.524, Lender may demand in writing that SBA purchase the guaranteed percentage of the outstanding balance of the loan if default by a borrower in making payment when due of any installment of principal or interest on any note continues uncured for more than 60 days (or less, if SBA agrees). 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 CA Loan Program Requirements, and that this Agreement remains in full force and effect with respect to the loan. 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 CA Loan Program Requirements.

**9. 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 CA Loan Program Requirements.

**10. 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, and if, in SBA's opinion, circumstances require, and any borrower's consent required is first obtained, 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.

**11. Payment of Expenses.** Subject to paragraph 9 above, all ordinary expenses of making, servicing, and liquidating a guaranteed loan will be paid by, or be recoverable from, the borrower. All reasonable expenses incurred by Lender or SBA which are not recoverable from the borrower will be shared ratably by Lender and SBA in accordance with their respective interests in any such loan.

**12. SBA Purchase Privilege.** Notwithstanding any provision of any agreement between SBA and Lender, SBA has the absolute right at any time to purchase its guaranteed percentage of any loan in the interest of the Government or the borrower. Within 15 days of the Lender's receipt of SBA's written demand to purchase the guaranteed percentage, Lender must deliver to SBA a certified transcript of the loan account showing date and amount of each advance or disbursement and repayment, assign and deliver to SBA the Loan Instruments, and provide SBA with any other documents requested by SBA. After receipt of these documents, SBA will pay Lender the guaranteed portion of the amount then owing on the loan in accordance with SBA's Loan Program Requirements.

**13. Secondary Market Participation and Other Participating Lender Financings.** With SBA's prior written consent, Lender may request the ability to sell the guaranteed portions of CA loans on SBA's secondary market provided that Lender complies with the CA Loan Program Requirements, including, without limitation, Agency regulations at 13 CFR Part 120, Subpart F – Secondary Market. Lender may sell an entire CA loan or CA loan portfolio to another CA Lender or 7(a) Lender (under limited circumstances) with SBA's prior written consent, which SBA may withhold in its sole discretion. The sale of an entire CA loan or CA loan portfolio must comply with the CA Loan Program Requirements, including Agency regulations at 13 CFR 120.430, 120.431, 120.432(a) and 120.433 (with respect to the sale of an entire CA loan). Lender may pledge any loans approved under the CA Pilot Program as collateral for certain lender financings provided the Lender complies with Agency regulations at 13 CFR 120.420, 120.430, 120.431 and 120.434. Lender may not, however, include any loans approved under the CA Pilot program in any securitizations or participations under 13 CFR 120.432(b) and 120.432(c).

**14. 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 CA

loan previously authorized by SBA, nor will termination by either party affect in any way the Lender's continuing obligation to comply with this Agreement and with all CA Loan Program Requirements, with respect to any CA loan previously authorized by SBA. However, 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 CA portfolio and/or the servicing and liquidation of the CA portfolio and related fees or income to SBA or another entity approved by SBA. If SBA requires transfer of Lender's CA loan portfolio, Lender must cooperate with SBA to transfer responsibility for servicing and liquidating its CA loan portfolio.

B. If Lender loses its certification as a Community Development Financial Institution or its authority to participate in SBA's Certified Development Company Program, SBA's Microloan Program or SBA's Intermediary Lending Pilot Program, this Agreement automatically terminates and the Lender must cooperate with SBA to transfer responsibility for servicing and liquidating its CA loan portfolio.

C. 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.

**15. Lending to Underserved Markets.** Lender must ensure that at least 60% of its CA loans are made to businesses in: (a) Low-to-Moderate Income (LMI) communities (while not a specific requirement CA Lenders are encouraged to serve low and very-low income communities); (b) Empowerment Zones and Enterprise Communities; (c) HUBZones; (d) New businesses, e.g., firms in business for no more than two years; (e) businesses eligible for SBA Veterans Advantage; (f) firms where more than 50% of their full-time workforce is low income or resides in LMI census tracts; and/or (g) Promise Zones.

**16. Loan Loss Reserve Account.** Lender must comply with all CA Loan Program Requirements for a Loan Loss Reserve Account (LLRA) as identified in the Federal Register notice announcing the pilot and the Community Advantage Participant Guide, each as amended from time to time.

**17. Consent to Receivership.** Lender consents and fully waives in advance any defenses to the appointment of a receiver of SBA's choosing, including SBA or the SBA Administrator, if SBA determines in its discretion that Lender has violated the Small Business Act, the Small Business Investment Act, this Agreement, any of the CA Loan Program Requirements, or any other applicable law. The receiver will hold and administer the assets of the Lender.

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

**19. Term.** The CA Pilot Program is a pilot program running through March 31, 2020. The term of this Agreement is for the duration of the pilot and will, therefore, expire

March 31, 2020. Expiration of this Agreement will not affect the guaranty of any CA loan previously authorized by SBA, nor will expiration of this Agreement affect in any way the Lender's continuing obligation to comply with this Agreement and with the CA Loan Program Requirements, with respect to any CA loan previously authorized by SBA. If SBA requires transfer of Lender's CA loan portfolio, Lender must cooperate with SBA to transfer responsibility for servicing and liquidating its CA loan portfolio.

**20. Assignment.** Lender may only assign or transfer its rights and obligations under this Agreement with prior written consent from an SBA official who is authorized to approve such assignment or transfer.

**21. Interpretation of this Agreement.**

A. This Agreement is subject to the Small Business Act, Small Business Investment Act, and the CA 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 those requirements. Lender consents and agrees to all rights and remedies available to SBA under the Small Business Act, Small Business Investment Act, and the CA Loan Program Requirements.

B. To the best of its knowledge, Lender certifies that it is in compliance with requirements of the Small Business Act, Small Business Investment Act, the CA Loan Program Requirements and any other applicable law.

C. Lender understands that SBA's rights and powers under the Small Business Act, Small Business Investment Act, and the CA Loan Program Requirements are in addition to, and 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 authority over Lender.

D. Lender agrees to hold SBA harmless for any action taken by SBA in enforcing this Agreement, the Small Business Act, Small Business Investment Act, and the CA 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, Small Business Investment Act, or the CA 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.)