

U.S. Small Business Administration

National 7(a) Authorization Boilerplate

Version 2018

Read this first!

About this document

This document contains version 2018 of the National 7(a) Authorization Boilerplate ("Boilerplate"). The Boilerplate contains the mandatory national standard language for all SBA authorizations except the national Export Working Capital Program (EWCP), CAPLines, 504 Loans (which have separate boilerplates), SBA Express and Export Express (which have alternate versions that may be used).

About the "7a Wizard"

The 7a Wizard, sometimes referred to as "Wizard," was automated using Microsoft Word and has been designed to run in Word 2010, 2013, or 2016. SBA cannot effectively support compatibility issues relating to versions of Word other than Word 2010, 2013, or 2016.

Changes to the Wizard and Boilerplate are outlined in the "What's new in this version?" section below.

Together, the Boilerplate and the Wizard constitute the "Authorization." The Wizard is a technical tool intended to make it easier for SBA Loan Officers and lenders to create authorizations based on the Boilerplate. It is not an expert system with lots of checks and balances. Use of the Wizard or any other automation tool does not release lenders from their responsibility to ensure that the authorizations they create comply with the Boilerplate. The National 7(a) Authorization is incorporated by reference into SOP 50 10 5(J).

Below is the list of 7a Wizard sections with their location in the Boilerplate:

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Format Conventions

All comments, references and instructions in the sections titled "Boilerplate" and "Appendix A" are located in shaded areas (gray or blue shade). All non-shaded areas in these two sections and Appendix A constitute the standardized text itself.

Text appearing in brackets [] must be completed, for instance:

[**Name**]—must be replaced by a name in the final authorization;

[**Amount**]—must be replaced by a \$ amount;

[**OPTION**—This sentence is optional]—Optional text—can be inserted or not;

[**SELECT**—this text—**OR**—that text]—User must select one of the available options;

[**SELECT**—First, Second, Third, Fourth, Fifth]—User must select one of the listed items;

[**Write Your Own**]—User can insert own text

Paragraphs will be renumbered depending on which options are selected. All other comments should be self-explanatory.

Operational Reminders:

- Names and addresses may be saved by right-clicking in any textbox after initial entry. Names and addresses may be retrieved by right-clicking in an empty textbox.
- Assure that the Windows in Taskbar option is turned off (Tools | Options | Windows in Taskbar -- uncheck) as well as Smart cut and paste (Tools | Options | Edit).
- Please review the Wizard Settings Fact Sheet (WizardFacts.doc), available on the 7a Wizard website and located in your templates directory after installation, for recommended optimal Word settings.

What's new in this version?

Version 2018

This section highlights the major differences between version 2011 and version 2018 of the Boilerplate.

Overview:

Version 2018 of the 7a Boilerplate includes changes due to the issuance of SOP 50 10 5 (J), effective January 1, 2018 and expiration of the Dealer Floor Plan pilot on September 30, 2013.

Summary of Changes:

Policy references were updated in the shaded boxes throughout the Boilerplate.

Loan Information Section

A. Guaranty Fee

- “Guarantee fee” was changed to “guaranty fee” throughout the Boilerplate. The Guaranty Fee guidance was changed to account for loans eligible for zero fee and the language allowing the lender to retain a percentage of the fee was changed to say that lender may retain 25% of “any required” guaranty fee for loans of \$150,000 or less.
- For loans with a maturity of 12 months or less, language was added to caution that Lenders must pay the guaranty fee within 10 business days from the date the loan number is assigned, that they are

required to use www.pay.gov to make this payment and that the guarantee will be cancelled if the full payment is not received within these 10 business days.

- The title, “Ongoing Servicing Fee” was changed to “On-going Guaranty Fee (Lender’s Annual Service Fee)” to match the language in 13 CFR §120.220 and SOP 50 10.

D. Required Forms

- New language reflects that for all 7(a) loans, Lenders may use their own Note and Guarantee forms in lieu of SBA Forms and that they must ensure that their documents comply with the requirements of SOP 50 10.
- A paragraph was added requiring Lenders to submit a copy of each completed SBA Form 159 to the fiscal and transfer agent after initial disbursement and in conjunction with their 1502 report for the month and to maintain each original in its file.

F. Note Terms

Extraordinary Servicing Fee

- Guidance is provided for extraordinary servicing fees.

Repayment Terms

- Mandatory language is provided for a Lender using its own Note instead of the SBA Form 147 Note.

Interest Rate Options

Options 1, 2, 3, 4, 5, and 7

- With regard to fixed rate loans, the interest rate may only be changed in accordance with SOP 50 10, and the word “reduced” was replaced with “changed” for the variable rate provisions.

For Variable or Split Rate Loans

- Added “date of first rate adjustment” to comply with SOP 50 10.
- Clarifies that changes to the Prime rate are always based on the first day of the application month or the month the rate is changed and that the interest rate and interest rate adjustment period may only be changed in accordance with SOP 50 10.
- Eliminated the “Ceiling and Floor Variable” option.

Subsidy Recoupment Fee

- The term “initial disbursement” was changed to “first disbursement” and “from the date of initial disbursement” was changed to “following the date of first disbursement” for determining the applicable Subsidy Recoupment Fee.

State Specific Language

- Added mandatory language for Georgia, Oregon, and Washington.

G. Use of Proceeds

- Changed use of proceeds option #17 from “purchase all outstanding stock” to “purchase all outstanding ownership interest” to account for other ownership types.
- Raised the amount allowed to be disbursed for working capital instead of listed purposes from 10% or \$10,000, whichever is less, to 20% or \$50,000, whichever is less.
- Added that an Eligible Passive Company (EPC) may not receive funds to be used for the purchase of any assets, including intangible assets, for use by the Operating Company (OC).

- Clarifies that with the exception of SBA Express, Export Express, and 7(a) Small Loans, SBA Form 1050 is required.

H. Collateral Conditions

- The Guarantee provision was modified to allow all Lenders to use their own Guarantees instead of the SBA Form 148 (Guarantee) or SBA Form 148L (Limited Guarantee), with the required language that must be added to Lender’s forms.
- The term “lien instruments” was changed to “security instruments” when referring to documents such as Mortgages, Deeds of Trust, and Security Agreements.
- State Specific Provisions:
 - Arizona, Georgia, Kentucky, Wisconsin: Whether the Lender uses SBA Form 148/148L or the Lender’s own form, the language was changed to cover all guarantees.
 - Georgia mandatory provision was updated.
 - Circumstances that require the California mandatory provision in California guarantees was updated.
 - Missouri: a change due to an amendment to RSMO §432.047 effective August 28, 2013, added, “...or unexecuted...” in the first sentence.
 - Idaho, Alaska, Washington: Added mandatory provision for real estate collateral.

I. Additional Conditions

Flood Insurance

- Various named types of personal property were summarized simply as “Personal Property Collateral.”
- Updated FEMA Form 81-93 to FEMA Form 086-0-32.
- Revised the language providing direction to Lenders when flood insurance coverage is not obtained for personal property collateral to conform to SOP 50 10.
- Revised the language for insurance coverage to match SOP 50 10.

Real Estate and Personal Property Hazard Insurance

- Added additional coverage, such as wind, hail, earthquake, etc., if the business is located in a state that requires additional coverage.

Environmental Requirements

- Modified instructions to only add subparagraph (b) for non-delegated loans (except 7(a) Small Loans) when Lender did not submit the results of an environmental investigation.

Borrower, Guarantor and Operating Company Documents Trustee Certification Paragraph 3.a(6)

- The Certificate from the trustee requiring consent by SBA and requiring lists of trustors and donors to be provided to SBA was amended to read “Lender/SBA.”

Optional Paragraph 3.b(5)

- **Consideration for Stock Purchase:** Revised to “Consideration for Acquisition of Ownership Interest(s)” and clarified that this option is to be used only in change of ownership transactions when the small business and an individual(s) acquiring the ownership interest in the small business are required to be Co-Borrowers.

Optional Paragraph 3.b(6)

- **Subordinate Funding:** The last sentence was amended to clarify that the named loan must be subordinate to the SBA Loan.

Operating Information

Verification of Financial Information

- “SBA version” was removed for Form 4506-T and “processing a loan under its delegated authority” was added to the last paragraph to match SOP 50 10.

Authority to Conduct Business

- Added “including, but not limited to, the ability to operate at the business location”.

Agreement of Franchisor

- Removed “Agreement of Franchisor” options.
- Added mandatory franchise documents to comply with SOP 50 10.

Injection

- Cash injection: Changed “injected into the business as equity capital” to “injected into the project” and added source of cash injection.
- Removed duplicate option: “Equity Injection/Standby Debt Injection”.

Standby Agreement

- Clarifies that standby agreement (Option 1 – No payment of principal or interest is to be made on Standby Debt during the term of the Loan) is mandatory when standby debt is being considered as part of Borrower’s injection.

Construction Provisions

- Clarifies that the requirement to obtain a statement that the building was built with only minor deviations (if any) is after construction is completed, and the statement may be from the appraiser, general contractor, project architect, or construction management firm.
- Changed “contractor” to “licensed contractor”.

Non-Citizens

- The provision requiring verification of US citizenship, lawful permanent resident status or legal alien status was deleted from the Authorization, because verification is now required prior to submission of the application to SBA. The Lender must document the finding in the loan file. This applies in all cases, regardless of the processing method or loan program.

Certifications and Agreements

- Receipt of Authorization: Added paragraph for referral to CAIVRS if the small business defaults on the SBA loan.
- Added mandatory provision for leasing.
- Environmental: Changed “Borrower or Operating Company” to “Borrower and Operating Company”.

APPENDICES A & B

- In Appendix A, in the Guarantee Paragraphs A1 – A4, the words “or equivalent lender’s form” was added for 7(a) loans.
- In Paragraphs B.1 & B.5 and Appendix B, a survey was deleted as an option for 7a loans.
- In Paragraphs B.1, B.2, & B.5, “policy to be without standard exceptions (“extended ALTA”) and without arbitration clause” was added to ALTA Loan Policy.
- In Paragraphs B.1 & B.5, property type “agricultural” was deleted. For agricultural land, user should choose “commercial”.

APPENDIX C, Frequently Asked Questions

- The answer to Question 3 was revised to reflect that the SOP supersedes the boilerplate if there is any conflict between the two.
- Language was added to Question 5 about lenders using their own Notes and Guarantees.
- The answers to Questions 9 and 14 were updated.

APPENDIX D, Borrower’s Certification

- Receipt of Authorization: Added paragraph for referral to CAIVRS if the small business defaults on the SBA loan.
- The Environmental Certification, Paragraph 5, was modified to change “Borrower or Operating Company” to “Borrower and Operating Company”.
- Removed sample form, Loan Agreement. SBA does not require that a lender use a loan agreement. It is up to the lender to determine whether a loan agreement is needed for its lending practice.

More Information

See **Appendix C** at the end of this document for a list of Frequently Asked Questions.

Boilerplate

For 7a Wizard users:

Loan Information section starts here...



U.S. Small Business Administration AUTHORIZATION (SBA GUARANTEED LOAN)

SBA Loan Information

The SBA LOAN NAME is the **first available** of this list:

1. dba of the Operating Company
2. name of the Operating Company
3. dba of the Borrower
4. name of the Borrower

In the case of multiple Borrowers or Operating Companies, the same rule is applied using the **first** Borrower or Operating Company listed by the Loan Officer.

For 7a Wizard users: The 7a Wizard automatically selects the SBA Loan Name based on the Borrower and Operating Company Information provided.

SBA Loan #	[SBA Loan Number]
SBA Loan Name	[SBA Loan Name]
Approval Date	[Approval Date]

Lender / SBA Information

13 CFR 120.10—Definition of Authorization states that the Authorization is not a contract to make a loan. The Authorization is not a Loan Agreement. It is intended to provide Lender with the specific conditions which must be met for SBA to provide a guarantee of the loan Lender is making to Borrower. It is not a contract to loan money, and Borrower is not a third party beneficiary of the Authorization. SBA does not lend money to Borrower and cannot force Lender to make a loan to Borrower based on the Authorization.

Lender:

[Lender's Name]
[Address]
[City, State Zip]

U. S. Small Business Administration (SBA):

[SBA Office's Name]
[Address]
[City, State Zip]

General Loan information

13 CFR 120.214—Date application is received by SBA is necessary to calculate interest rate on variable rate loans. 13 CFR 120.210- explains SBA guarantee percentage.

SOP 50 10 — Guarantee percentage policy. There is an effect on the guarantee percentage and guaranty fee when two 7(a) loans are approved to the same borrower within 90 days. This 90-day rule does not apply when one of the loans is a 504 loan.

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 loan ("Loan") in the amount of \$[Loan Amount] to assist:

Borrower and Operating Company information

13 CFR 120.111 / SOP 50 10 — Operating company must be a Co-Borrower if loan proceeds are used for working capital or to purchase assets to be owned directly by the Operating Company. If not a Co-Borrower, Operating Company must be a Guarantor. If the Loan is made to an Eligible Passive Company (EPC), there can only be one EPC Borrower, but there can be multiple Operating Companies (OC) as Co-Borrowers or Guarantors. If several individuals hold the property leased to the OC as joint tenants or tenants in common, then each individual must be listed separately, but they are considered together to be one EPC.

Borrower: [OPTION—(EPC)]

1. [Name 1] [OPTION—dba
[DBA Name]]
[Address]
[City, State Zip]
2. [Name 2] [OPTION—dba
[DBA Name]]
[Address]
[City, State Zip]
3. [etc.]

[OPTION—Operating Company

1. [Name 1] [SELECT—(Co-Borrower) or
(Guarantor)]
[OPTION—dba [DBA Name]]
[Address]
[City, State, Zip]
2. [Name 2] [SELECT—(Co-Borrower) or
(Guarantor)]
[OPTION—dba [DBA Name]]
[Address]
[City, State, Zip]
3. [etc.]]

All requirements in the Authorization which refer to Borrower also apply to any Co-Borrower.

GUARANTY FEE

13 CFR Reference: 120.220/SOP Reference: SOP 50 10. The Guaranty Fee depends on the loan amount and the maturity of the loan. In fiscal year 2018 the Guaranty Fee is zero for loans of \$125,000 or less. You will need to manually adjust the guaranty fee amount if the loan is eligible for zero guaranty fee or Veterans Advantage. However, any loan approved within 90 days of a zero fee loan that results in a combined amount of loans greater than \$125,000 will be charged a combined guaranty fee based on the aggregate amount of the loans. See current Information Notice announcing annual fees for updates.

For 7a Wizard users: The 7a Wizard automatically inserts the appropriate paragraph below based on the maturity period specified in F.1. **Note:** If two 7(a) loans are approved to the same borrower within 90 days, you must calculate the guaranty fee on the second loan manually.

A. THE GUARANTY FEE IS \$[Amount].

Insert the following two paragraphs if maturity is more than 12 months

Lender must pay the guaranty fee within 90 days of the approval date of this Authorization. Failure to timely pay the guaranty 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 or by ACH if they have previously enrolled with the SBA. No part of the guaranty fee is refundable if Lender has made any disbursement. Lender may collect this fee from Borrower after initial disbursement of Loan, except 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 guaranty fee.

For loans of \$150,000 or less, Lender may retain 25% of any required guaranty fee but must remit the remainder to SBA.

Insert the following paragraph if maturity is 12 months or less

Lender must pay the guaranty fee within 10 business days from the date the loan number is assigned. Lenders are required to use www.pay.gov. No guarantee exists if Lender has not timely paid the guaranty fee in full. If the fee is not received within 10 business days after the loan number is issued, SBA will cancel the guarantee. Lender may collect this fee from Borrower only after Lender has paid the fee. Borrower may use Loan proceeds to reimburse Lender for the guaranty fee.

On-going Guaranty Fee

13 CFR Reference 120.220/SOP Reference: SOP 50 10. In fiscal year 2018 the On-going Guaranty Fee (Lender's Annual Service Fee or yearly fee) is 0.55%. See current Information Notice announcing annual fees for updates.

B. ON-GOING GUARANTY FEE (Lender's Annual Service Fee):

1. Lender agrees to pay SBA an on-going guaranty fee equal to **[Percent]** of one percent per year of the guaranteed portion of the outstanding balance.
2. Lender may not charge or otherwise pass through this fee to Borrower.

Lender's responsibility

13 CFR 120.400 et seq./SOP 50 10 - Closing documents

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 Loan closing documents. Lender must submit these documents, along with other required 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.

D. REQUIRED FORMS

SOP 50 10 - For all 7(a) loans, whether processed under non-delegated or delegated authority, Lenders have the option of using their own note and guaranty agreements or the SBA versions (SBA Forms 147, 148, and 148L). There must be a promissory note that is legally enforceable and assignable, in the event that it would ever have to be assigned to SBA.

For 7a Wizard users: The 7a Wizard automatically inserts the references to the forms as applicable.

1. Lender may use its own forms except as otherwise instructed in this Authorization. Lender must use the following SBA forms for the Loan:

NOTE: LENDER MAY USE ITS OWN NOTE AND GUARANTEE AGREEMENTS IN LIEU OF THE SBA NOTE AND GUARANTEE AGREEMENTS. IF LENDER USES ITS OWN NOTE AND/OR GUARANTEE FORMS, LENDER MUST ENSURE THE DOCUMENTS COMPLY WITH THE REQUIREMENTS SET FORTH IN SOP 50 10.

SBA Form 147, Note or Lender’s own Note that complies with SOP 50 10

SBA Form 1050, Settlement Sheet

SBA Form 159, Compensation Agreement, for each required agent

SBA Form 722, Equal Opportunity Poster

[MUST APPEAR when applicable—Guarantee: SBA Form 148 or Lender equivalent]

[MUST APPEAR when applicable—Limited Guarantee: SBA Form 148L or Lender equivalent]

[MUST APPEAR when applicable—SBA Form 601, Agreement of Compliance]

SOP 50 10 - Closing documentation; Disclosure of fees and lender expenses

2. Lender may use computer-generated versions of mandatory SBA Forms, as long as the text is identical.
3. Lender must submit a copy of each completed SBA Form 159 by email to the SBA fiscal and transfer agent after initial disbursement and in conjunction with Lender’s 1502 Report for the month. Lender must maintain each original SBA Form 159 in its file.

Contingencies

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

1. Having and complying with a valid SBA Loan Guarantee Agreement (SBA Form 750, SBA Form 750B for short-term loans, or 750CA for Community Advantage (CA) loans, if applicable) and any required supplemental guarantee agreements, between Lender and SBA;
2. Having paid the full guaranty fee in the time and manner required by this Authorization and SBA Loan Program Requirements;
3. Complying with the current SOP 50 10 and all applicable appendices;
4. Completing disbursement no later than 48 months from the approval date of this Authorization. (The loan must be fully disbursed within 48 months from the date of this Authorization. Any undisbursed balance remaining after 48 months will be automatically cancelled by SBA.);

5. Having no evidence since the date of the Loan application, or since any preceding disbursement, of any unremedied adverse change in the financial condition, organization, management, operation, or assets of Borrower or Operating Company which would warrant withholding or not making any further disbursement; and,
6. Satisfying all of the conditions in this Authorization.

Maturity

F. NOTE TERMS

13 CFR 120.212/SOP 50 10 – Loan Maturities.

1. **Maturity:** This Note will mature in [number of years and/or number of months] from [SELECT—date of Note—OR—date of initial disbursement].

Extraordinary Servicing Fee (Optional)

2. **Extraordinary Servicing Fee:**

13 CFR 120.221(b)/SOP 50 10 – **Guidance on Extraordinary Servicing Fee** — Lenders do not have to charge an extraordinary servicing fee. This clause is only selected if an extraordinary servicing fee will be used, and a percentage will be input into the paragraph not to exceed 2%.

Lender may charge an extraordinary servicing fee of [Percent - may not exceed 2%]% per year of the outstanding balance on the part requiring special servicing. This fee may be charged monthly and will be computed by multiplying [(Above Percent divided by 100)/12 - computed by computer] by either the average daily or monthly outstanding balance for each month. SBA’s guarantee does not extend to extraordinary servicing fees and, at time of guarantee purchase, SBA will not pay any portion of such fees.

For 7a Wizard users:

Repayment Terms section starts here...

THE FOLLOWING LANGUAGE MUST ALWAYS APPEAR

3. **Repayment Terms:**

If Lender uses its own Note, Lender must comply with the repayment terms set forth below and must ensure the Note is legally enforceable and assignable, has a stated maturity and is not payable on demand. 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."

If Lender uses SBA Note, Form 147, Lender must insert into Note, to be executed by Borrower, the following terms, without modification. Lender must complete all blank terms on the Note at time of closing.

INTEREST RATE OPTIONS

13 CFR 120.213 through 215/SOP 50 10 - Interest Rates. Lender must comply with SOP 50 10 requirements to change the interest rate.

Select one and only one of the 7 following options

Option 1—Fixed Rate

The interest rate is [**interest rate**]% per year. The interest rate may only be changed in accordance with SOP 50 10.

Option 2—Variable Rate

The interest rate on this Note will fluctuate. The initial interest rate is [**initial interest rate**]% per year. This initial rate is the [**Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate**] in effect on the first business day of the month in which SBA received the loan application, plus [**% over [Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate]**]. The initial interest rate must remain in effect until the first change period begins unless changed in accordance with SOP 50 10.

Option 3—Variable Rate—Multiple Fluctuation Periods

The initial interest rate is [**initial interest rate**]% per year for [**period**]. This initial rate is the [**Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate**] in effect on the first business day of the month in which SBA received the loan application, plus [**% over [Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate]**]. The interest rate on this Note will then begin to fluctuate as described below. The initial interest rate must remain in effect until the first change period begins unless changed in accordance with SOP 50 10.

Option 4—SBA Rate Fixed / Lender Rate Variable

The interest rate is fixed at [**fixed interest rate**]% per year on the guaranteed portion of this Note. The interest rate on the non-guaranteed portion of this Note will fluctuate. The initial interest rate is [**initial interest rate**]% per year on this portion of the Note. This initial rate is the [**Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate**] in effect on the first business day of the month in which SBA received the loan application, plus [**% over [Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate]**]. The initial interest rate must remain in effect until the first change period begins unless changed in accordance with SOP 50 10.

Option 5—SBA Rate Variable / Lender Rate Fixed

The interest rate on the guaranteed portion of this Note will fluctuate and the initial interest rate is [**initial interest rate**]% per year on this portion. This initial interest rate is the [**Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate**] in effect on the first business day of the month in which SBA received the loan application, plus [**% over [Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate]**]. The initial interest rate must remain in effect until the first change period begins unless changed in accordance with SOP 50 10. The interest rate on the non-guaranteed portion of this Note is fixed at [**fixed interest rate**]% per year.

Option 6—Two Fixed Rates

The interest rate on [first share of principal]% of the outstanding principal balance is [first interest rate]% per year, and the interest rate on [second share of principal]% of the outstanding principal balance is [second interest rate]% per year.

Option 7—Split Variable And Fixed Rates

The interest rate on a percentage of the principal balance of this Note will fluctuate and the interest rate on the remaining percentage of the principal balance of this Note is fixed. The initial interest rate on [first share of principal]% of the outstanding principal balance is [first interest rate]% per year. This initial rate is the [Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate] in effect on the first business day of the month in which SBA received the loan application, plus [% over Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate]%. The initial interest rate must remain in effect until the first change period begins unless changed in accordance with SOP 50 10. The interest rate on [second share of principal]% of the outstanding principal balance is fixed at [second interest rate - fixed]%.

Interest Only Options—Select one or none of the 2 following options

Note: if payment day is unknown, use '_____calendar day'. The blank will then be filled-in in the Note at time of closing.

Option 1—One payment

Borrower must pay one payment of interest only on the disbursed principal balance [Number] [SELECT—month(s), quarter, calendar quarter, year] from the month SELECT (same as in F.1.)—this Note is dated—OR—of initial disbursement on this Note]; payment must be made on the [SELECT—_____calendar day, first calendar day, second calendar day, etc., same day as the date of this Note, same day as the date of initial disbursement on this Note] in the month it is due.

Option 2—More than 1 payment

Borrower must pay a total of [number of payments] payments of interest only on the disbursed principal balance beginning [Number] [SELECT—month(s), quarter, calendar quarter, year] from the month SELECT (same as in F.1.)—this Note is dated—OR—of initial disbursement on this Note] and [SELECT—every [Number] month(s), every quarter, every calendar quarter, every year] thereafter; payments must be made on the [SELECT—_____calendar day, first calendar day, second calendar day, etc., same day as the date of this Note, same day as the date of initial disbursement on this Note] in the months they are due.

Other Payment Terms Options

Select one and only one of the 6 following options:

Note: if payment day is unknown, use ' _____ calendar day'. The blank will then be filled-in in the Note at time of closing.

Option 1- Principal And Interest

Borrower must pay principal and interest payments of \$[Amount] every [Number] [SELECT—month(s), quarter, calendar quarter, year] beginning [Number] [SELECT—month(s), quarter, calendar quarter, year] from the month [SELECT (same as in F.1.)—this Note is dated—OR—of initial disbursement on this Note]; payments must be made on the [SELECT—_____calendar day, first calendar day, second calendar day, etc., same day as the date of this Note, same day as the date of initial disbursement on this Note] in the months they are due.

Option 2—Interest Plus Principal

Borrower must pay interest on the disbursed principal balance, plus principal of \$[Amount] every [Number] [SELECT—month(s), quarter, calendar quarter, year] beginning [Number] [SELECT—month(s), quarter, calendar quarter, year] from the month SELECT (same as in F.1.)—this Note is dated—OR—of initial disbursement on this Note]; payments must be made on the [SELECT—_____calendar day, first calendar day, second calendar day, etc., same day as the date of this Note, same day as the date of initial disbursement on this Note] in the months they are due.

Option 3—Regular Interest Plus Seasonal Principal

Borrower must pay interest on the disbursed principal balance every [Number] [SELECT—month(s), quarter, calendar quarter, year], plus principal payments of \$[Amount] in the month(s) of [list of months] inclusive each year, beginning [Number] [SELECT—month(s), quarter, calendar quarter, year] from the month SELECT (same as in F.1.)—this Note is dated—OR—of initial disbursement on this Note]; interest payments must be made on the [SELECT—_____calendar day, first calendar day, second calendar day, etc., same day as the date of this Note, same day as the date of initial disbursement on this Note] in the months they are due; principal payments must be made on the [SELECT—_____calendar day, first calendar day, second calendar day, etc., same day as the date of this Note, same day as the date of initial disbursement on this Note] in the months they are due.

Option 4—Seasonal P And I, Payment Months Specified

Borrower must pay monthly principal and interest payments of \$[Amount] in the months of [list of months] each year beginning [Number] [SELECT—month(s), quarter, calendar quarter, year] from the month SELECT (same as in F.1.)—this Note is dated—OR—of initial disbursement on this Note]; payments must be made on the [SELECT—_____calendar day, first calendar day, second calendar day, etc., same day as the date of this Note, same day as the date of initial disbursement on this Note] in the months they are due.

Option 5—Seasonal P And I, Nonpayment Periods Specified

Borrower must pay principal and interest payments of \$[Amount] every [Number] [SELECT—month(s), quarter, calendar quarter, year], except [exception period], beginning [Number] [SELECT—month(s), quarter, calendar quarter, year] from the month **SELECT (same as in F.1.)**—this Note is dated—OR—of initial disbursement on this Note]; payments must be made on the [SELECT—_____calendar day, first calendar day, second calendar day, etc., same day as the date of this Note, same day as the date of initial disbursement on this Note] in the months they are due.

Option 6—Seasonal P And I, Two Different Payments Specified

Borrower must pay monthly principal and interest payments of \$[Amount] in the months of [list of months] each year and \$[Amount] in the months of [list of months] beginning [Number] [SELECT - month(s), quarter, calendar quarter, year] from the month [SELECT (same as in F.1.)—this Note is dated—OR—of initial disbursement on this Note]; payments must be made on the [SELECT—_____calendar day, first calendar day, second calendar day, etc., same day as the date of this Note, same day as the date of initial disbursement on this Note] of the month.

Option 7—Mississippi Poultry

Note: Use only with "Two fixed Rates" or "Split variable and fixed rates" interest rate options.

Borrower must pay principal and interest payments of \$[Amount] on [Percent]% of the disbursed principal balance on the first day of each quarter, beginning [Number] [SELECT—month(s), quarter, calendar quarter, year] from the month **SELECT (same as in F.1.)**—this Note is dated—OR—of initial disbursement on this Note]. Borrower will pay additional principal payments of \$[Amount], on the same day.

The following paragraph must always appear

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

Option for escrow account related to commercial real estate collateral

SOP 50 10 — "Escrow Policy for Commercial Real Estate Taxes and Insurance."

Lender and Borrower may agree to pay an additional amount into an escrow account for payment of real estate taxes and required insurance related to commercial real estate securing the loan when applicable. Any such account must comply with SOP 50 10.

OPTIONS FOR VARIABLE OR SPLIT RATE LOANS ONLY

The following must always appear in ALL variable or split rate loans

The interest rate will be adjusted [SELECT—monthly, quarterly, semi-annually, annually, every calendar quarter, every calendar year, every [number of months] months, every [number of years] years or semi-annually, every [number of years] years, every calendar quarter, every calendar year] (the "change period"), beginning _____ (date of first rate adjustment).

[SELECT—The "Prime Rate" is the Prime Rate in effect on the first business day of the month (as published in the [name of publisher] [SELECT—newspaper or website]) in which

SBA received the application, or the first day of the month in which any interest rate change occurs. **or** The "SBA Optional Peg Rate" is the 'Peg' rate published by SBA in the Federal Register for every calendar quarter. **or** The "LIBOR Base Rate" is the combination of the One Month London Interbank Offered Rate in effect on the first business day of the month (as published in a national financial newspaper or website) in which SBA received the application, or the first day of the month in which any interest rate change occurs, plus an additional 3.0 percentage points.] Base Rates will be rounded to two decimal places with .004 being rounded down and .005 being rounded up.

The adjusted interest rate will be [% **above the [Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate]**]% above the [**Prime Rate/SBA Optional Peg Rate/LIBOR Base Rate**]. Lender will adjust the interest rate on the first calendar day of each change period. The change in interest rate is effective on that day whether or not Lender gives Borrower notice of the change.

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.

The interest rate adjustment period may only be changed in accordance with SOP 50 10.

Ceiling and Floor (Optional)

The amount that the interest rate on this Note may vary is limited by a floor and a ceiling:

- (1) The maximum interest rate (ceiling) will not exceed [**ceiling**]% above the initial interest rate.
- (2) The minimum interest rate (floor) will not be less than [**floor**]% below the initial interest rate.

The following must always appear in variable or split rate loans

Lender must adjust the payment amount at least annually as needed to amortize principal over the remaining term of the note.

The following must always appear in ALL variable or split rate loans

If SBA purchases the guaranteed portion of the unpaid principal balance, the interest rate becomes fixed at the rate in effect at the time of the earliest uncured payment default. If there is no uncured payment default, the rate becomes fixed at the rate in effect at the time of purchase.

The following paragraph must appear in all loans

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 receives the notice, pay an amount equal to 21 days' interest from the date lender receives the notice, less any interest accrued during the 21 days and paid under subparagraph b., above.

If Borrower does not prepay within 30 days from the date Lender receives the notice, Borrower must give Lender a new notice.

The following paragraph must always appear in loans with a maturity of 15 years or more

Subsidy Recoupment Fee. 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:

- a. During the first year after the date of first disbursement, 5% of the total prepayment amount;
- b. During the second year after the date of first disbursement, 3% of the total prepayment amount; and
- c. During the third year after the date of first disbursement, 1% of the total prepayment amount.

THE FOLLOWING PARAGRAPH MUST APPEAR IN ALL LOANS

All remaining principal and accrued interest is due and payable [**Maturity period—same as in F.1.**] from [**SELECT—Same as in F.1—date of Note—OR—date of initial disbursement**].

ADDITIONAL REPAYMENT OPTIONS

Select none, one or several of the 3 following options

Option 1—Late Charge

13 CFR 120.221(d)/SOP 50 10 – Late Payment Fee.

Late Charge: If a payment on this Note is more than [**number of days (10 days minimum)—default is 10**] days late, Lender may charge Borrower a late fee of up to [**percent—default is 5**] % of the unpaid portion of the regularly scheduled payment.

Option 2—Net Earnings Recapture Clause Option

Note: when it is determined that this clause is necessary, it is recommended that the 'limitation of compensation' clause option be exercised. Otherwise, it is feasible for owner compensation to be adjusted to offset any requirements to prepay the loan.

Borrower must also pay, as a prepayment, an amount equal to [**SELECT—[Percent]**] % of Borrower's 'net earnings'—**OR—**Borrower's 'net earnings' over \$[**Amount**]. This payment is due within 90 days of each of Borrower's subsequent fiscal year ends, commencing with the date of the Note. 'Net earnings' is defined as net profit after tax plus depreciation less all principal payments paid on all indebtedness of Borrower at the time of application.

Option 3—State Interest Rate Reduction Option

In the event that Borrower qualifies for the [**Name of program, such as LIFT Focused Small Business Program**], Lender may accept a lower interest rate and resulting lower payments. If Borrower no longer qualifies for the [**Name of program—same as above**] or is in default under the terms of this Note, then the interest rate and payment will revert to the interest rate and payment specified above.

**Repayment terms—Open Options
(Can be used to insert additional repayment terms as needed)**

STATE SPECIFIC LANGUAGE

For 7a Wizard users: The 7a Wizard automatically inserts the following options as appropriate.

The following must appear when lien is on residential property located in California

4. Lender must include in the Note the following language for residential property located in California:

"Borrower acknowledges this Note is secured by a Deed of Trust in favor of Lender on real property located in _____ County, State of California. That Deed of Trust contains the following due-on-sale provision:..." (Lender must add to the Note the due on sale clause exactly as it appears in the Deed of Trust.)

The following must appear if any borrower is resident of Alaska

5. The following language must appear in the Note above the borrower's signature :

"The Mortgagor or Trustor (Borrower) is personally obligated and fully liable for the amount due under the Note. The Mortgagee or Beneficiary (Lender) has the right to sue on the Note and obtain a personal judgment against the Mortgagor or Trustor for the satisfaction of the amount due under the Note either before or after a judicial foreclosure of the Mortgage or Deed of Trust as under AS 09.45.170-09.45.220."

The following must appear if any borrower is resident of Wisconsin

6. Lender must include in the Note the following language:

"Each Borrower who is married represents that this obligation is incurred in the interest of his or her marriage or family."

The following must appear if any borrower is resident of Maryland

7. Lender must include valid confession of judgment clauses in the Note for borrower(s) resident in Maryland.

The following must appear if any borrower is resident of Virginia

8. Lender must include valid confession of judgment clauses in the Note for borrower(s) resident in Virginia.

The following must appear if any borrower is resident of Pennsylvania

9. Lender must include confession of judgment clauses in the Note for borrower(s) resident in Pennsylvania.

The following must appear if any borrower is resident of Delaware

10. Lender, at its option, may include confession of judgment clauses in the Note for borrower(s) resident in Delaware.

The following must appear if any borrower is resident of Ohio

11. Lender, at its option, may include confession of judgment clauses (cognovit judgment provisions) in the Note for borrower(s) resident in Ohio.

The following must appear if any borrower or guarantor is resident of Missouri

12. Lender shall comply with Section 432.047 RSMO by adding the following language in boldface ten point type to the Note, Guarantees and other Credit Agreements as defined by the Statute:

"Oral or unexecuted agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which it is based that is in any way related to the credit agreement. To protect you (Borrowers(s)) and us (Creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it."

The following must appear if any borrower is resident of Georgia

13. Lender must include in the Note the following language:
"The undersigned borrower hereby waives the right to require the Holder of this obligation to confirm any foreclosure sale as a condition for taking action to collect on this note."

The following must appear if any borrower is resident of Oregon

14. Lender must comply with ORS 41.580 by adding the following language to the Note in at least 10-point, bold-face type:

"UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY [BENEFICIARY]/US CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY GRANTOR'S/BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY [AN AUTHORIZED REPRESENTATIVE OF BENEFICIARY]/US TO BE ENFORCEABLE."

The following must appear if any borrower or guarantor is resident of Washington

15. Lender must comply with RCW 19.36.130 and .140 by adding the following language in boldface ten point type to the Note, Guarantees and other Credit Agreements:

"Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law."

G. USE OF PROCEEDS

13 CFR 120.120 and 120.130/SOP 50 10 —Eligible Use of Loan Proceeds; Loan Closing and Disbursement; No disbursement solely for guaranty fee; EPC Eligible Use of Proceeds.

Insert as many use of proceeds paragraphs as applicable using the following 21 options

1. \$[Amount] to purchase land located at [location].
2. \$[Amount] to purchase land and improvements located at [location].
3. \$[Amount] to purchase improvements located at [location].
4. \$[Amount] to construct a building to be located at [location]. Construction financing guaranteed by SBA.
5. \$[Amount] to add an addition to the building located at [location]. Construction financing guaranteed by SBA.
6. \$[Amount] to make renovations to the building located at [location]. Construction financing guaranteed by SBA.
7. \$[Amount] to pay off interim construction loan from [Lender's name]. Construction financing not guaranteed by SBA.
8. \$[Amount] to pay off interim loan used for [description].
9. \$[Amount] to make leasehold improvements to the building located at [location]. Construction financing guaranteed by SBA.
10. \$[Amount] to purchase equipment.
11. \$[Amount] to purchase fixtures.
12. \$[Amount] to purchase inventory.
13. \$[Amount] to pay trade or accounts payable.
14. \$[Amount] to pay notes payable to [payee].
15. \$[Amount] to pay outstanding debt to [payee].
16. \$[Amount] to purchase the business known as [name of business] [OPTION–, according to the executed Purchase Agreement dated [date]], including \$[Amount] for intangible assets described as [specifically identify intangible assets to be financed with loan proceeds].
17. \$[Amount] to purchase all outstanding ownership interest of [name of corporation/entity] held by [Stockholder/Seller], including \$[Amount] for intangible assets described as [specifically identify intangible assets to be financed with loan proceeds].
18. \$[Amount] to pay SBA loan number [Loan number].
19. \$[Amount] for working capital.

20. \$[Amount] to pay the guaranty fee (Lender may not disburse Loan proceeds solely to pay the guaranty fee)
21. \$[Amount] [to/for (Write your own)].

The following paragraphs must always appear

All amounts listed above are approximate. Lender may not disburse Loan proceeds solely to pay the guaranty fee. Lender may disburse to Borrower, as working capital only, funds not spent for the listed purposes as long as those funds do not exceed 20% of the specific purpose authorized or \$50,000.00, whichever is less. An Eligible Passive Company may not receive working capital funds or funds to be used for the purchase of other assets, including intangible assets, for the Operating Company's use.

The loan must be made for a sound business purpose and must benefit the small business, and one 7(a) loan may not be split into two 7(a) loans merely to benefit the Lender. 13 CFR 120.120 and 120.130(f).

SOP 50 10 — with the exception of “7(a) Small Loans” (loans up to and including \$350,000, as defined in SOP 50 10), 1050 required.

The following must appear for all loans

Lender must document that Borrower used the loan proceeds for the purposes stated in this Authorization. Except under SBA Express, Export Express, and 7(a) Small Loans, Lender and Borrower must complete and sign SBA Form 1050 at the time of first disbursement. Lender must document the first and all subsequent disbursements by attaching required documentation to the original SBA Form 1050 and must maintain the documentation in the Loan file, following the procedures described in SOP 50 10.

H. COLLATERAL CONDITIONS**SOP 50 10 – Guaranties; General Collateral Requirements.**

Lender must obtain a lien on 100% of the interests in the following collateral and properly perfect all lien positions.

Create as many collateral conditions as needed.

IMPORTANT—READ THIS FIRST!

This document offers an extensive choice of standard Collateral Conditions.

Refer to Appendix A for the full boilerplate text of these Collateral Conditions.

You can also write your own collateral conditions if the standard list does not offer the appropriate option.

The following language must appear in Lender's Guarantee when Lender uses its own Guarantee.

"When SBA is the holder, the Note and this Guarantee 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 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."

1. [Insert first Collateral Condition here]
2. [Insert second Collateral Condition here]
3. [Etc.—Insert as many Collateral Conditions as needed]

The following Collateral Condition must appear if borrower is an EPC

13 CFR 120.111(a)(3)/SOP 50 10 —The Eligible Passive Company (EPC) Rule. Conditions that apply to all legal entities.

For 7a Wizard users: This option is automatically inserted when the "Borrower is an Eligible Passive Company" option is selected on the Borrower Information panel.

4. Assignment of Rents from Eligible Passive Company. Lender must obtain a perfected assignment of all rents paid under the lease between the Eligible Passive Company and the Operating Company. The term of lease, with options to renew exercisable solely by the Operating Company, must be for at least the term of the Loan. The lease must be in writing and subordinate to Lender's Security Interest, Deed of Trust or Mortgage. Lease payments must be no more than is necessary to amortize debt plus pay expenses related to holding the property.

If in acquiring the property the Eligible Passive Company becomes the beneficiary or owner of the right to an existing mineral lease on the property, the Eligible Passive Company must assign its interest in the lease (together with its rights to all rental, mineral, royalty, bonus, or similar lease payments that might accrue by virtue of the existing mineral (oil and gas) lease to the Operating Company; and any such assignment must be subordinated to all Deeds of Trust or Mortgages. In addition, the Lender must take the additional actions described in SOP 50 10 as applicable.

The following paragraphs must always appear

13 CFR 101.106, Federal Law application to SBA programs & activities.

The following language must appear in all security instruments including Mortgages, Deeds of Trust, and Security Agreements:

“The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

- a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.*
- b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.*
- c) Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.”*

For 7a Wizard users: the following paragraphs are automatically inserted by the 7a Wizard as appropriate.

The following paragraphs must appear if any guarantor, any Borrower or any real estate is located in California

California Mandatory Provision—The following language must appear in California guarantees if any borrower, guarantor, or any real estate is located in California:

"Guarantor waives its rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the guarantor by reason of California Civil Code Sections 2787 to 2855, inclusive.

The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property. This means, among other things:

- (1) The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.*
- (2) If the creditor forecloses on any real property collateral pledged by the debtor:*
 - (A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.*
 - (B) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.*

This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.

The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise."

If Guarantee is secured by Deed of Trust on residential property in California, Lender must also include in the guarantee the following language:

"Guarantor acknowledges that this Guarantee is secured by a Deed of Trust in favor of Lender On real property located in _____ County, California. That Deed of Trust contains the following due-on-sale provision:..." (Lender must add to the Guarantee the due on sale clause exactly as it appears in the Deed of Trust.)

The following paragraphs must appear if a guarantee is to be signed by a resident of Arizona

Arizona Mandatory Provision—The following language must appear in all guarantees (including limited guarantees) signed by Arizona residents:

"The undersigned waives any rights it may have pursuant to ARS Section 12-1641 et seq., and agrees pursuant to ARS Section 33-814 that the obligations of the undersigned may be enforced regardless of whether or not any Trustee's sale of security for this debt is held."

The following paragraphs must appear if a guarantee is to be signed by a resident of Wisconsin

Wisconsin Mandatory Provision—The following language must appear in all guarantees (including limited guarantees) signed by Wisconsin residents:

‘Each Guarantor who is married represents that this obligation is incurred in the interest of his or her marriage or family.’

The following paragraph must appear if a guarantee is to be signed by a resident of Maryland

Maryland Mandatory Provision—Lender must include valid confession of judgment clauses in guarantees signed by Maryland residents.

The following paragraph must appear if a guarantee is to be signed by a resident of Pennsylvania

Pennsylvania Mandatory Provision—Lender must include valid confession of judgment clauses in guarantees signed by Pennsylvania residents.

The following paragraph must appear if a guarantee is to be signed by a resident of Virginia

Virginia Mandatory Provision—Lender must include valid confession of judgment clauses in guarantees signed by Virginia residents.

The following paragraph must appear if a guarantee is to be signed by a resident of Missouri

Missouri Mandatory Provision—Lender shall comply with Section 432.047 RSMO by adding the following language in boldface ten point type to the Note, Guarantees and other Credit Agreements as defined by the Statute:

"Oral or unexecuted agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which it is based that is in any way related to the credit agreement. To protect you (Borrowers(s)) and us (Creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it."

The following paragraph must appear if a guarantee is to be signed by a resident of Georgia

Georgia Mandatory Provision—The following language must appear in all guarantees (including limited guarantees) signed by Georgia residents:

“The undersigned guarantor hereby waives the right to require the Holder of the obligations hereby guaranteed to take action against the debtor as provided for in O.C.G.A. 10-7-24. The guarantor further waives the right to require the Holder to confirm any foreclosure sale as a condition for taking action to collect the guarantee.”

The following paragraph must appear if a guarantee is to be signed by a resident of Kentucky

Kentucky Mandatory Provision—The following language must appear in all guarantees (including limited guarantees) signed by Kentucky residents:

“These provisions are for the purpose of KRS 371.065 only and do not waive or avoid guarantor’s obligations on this guarantee in part or in whole. The amount of the maximum principal aggregate liability of guarantor is the loan amount plus interest at the note rate, unless the maximum liability box is checked on SBA Form 148L, which would limit liability to the stated maximum liability plus interest at the note rate. The date on which this guarantee terminates is the maturity date of the note plus 6 years, provided such termination shall not affect extensions or renewals of interest accruing on, or fees, costs or expenses incurred with respect to, such obligations on or after such date. The above termination date is extended by any event that delays or avoids the statutes of limitations.”

The following paragraph must appear if a guarantee is to be signed by a resident of Delaware

Delaware Mandatory Provision—Lender, at its option, may include confession of judgment clauses in guarantees signed by Delaware residents.

The following must appear if any real estate is located in Idaho

Idaho Mandatory Provision - Lender must comply with I.C. § 45-1502(5) by adding the appropriate language regarding the size of the real property to the legal description on Deed of Trust:

“. . . that property in the County of _____, State of Idaho, described as follows, and containing not more than eighty acres: . . .”

Alternatively, for property that is principally used for agricultural purposes and is less than forty acres:

“. . . that property in the County of _____, State of Idaho, described as follows, and containing not more than forty acres: . . .”

The following must appear if any real estate is located in Alaska

Alaska Mandatory Provision - Lender must comply with A.S. § 34.20.150 by adding the date of maturity to the Deed of Trust, which must be equivalent to the maturity date of the underlying Note, as follows:

“The lien interest created by this Deed of Trust matures on (Date).”

The following must appear if any real estate is located in Washington

Washington Mandatory Provision - Lender must comply with RCW 61.24.030 by adding the following language to the Deed of Trust for all Property that is not used for agricultural purposes (an operation that produces crops, livestock, or aquatic goods):

“The [Property] is not principally used for agricultural purposes.”

Alternatively, if the property is principally used for agricultural purposes a Mortgage should be used.

I. ADDITIONAL CONDITIONS**INSURANCE REQUIREMENTS (MANDATORY)****1. Insurance Requirements**

Prior to disbursement, Lender must require Borrower to obtain the following insurance coverage and maintain this coverage for the life of Loan:

Flood Insurance (MANDATORY for collateral)

13 CFR 120.170/SOP 50 10 — Flood Insurance.

Note: The SBA requires flood insurance on personal property collateral even when the real estate where the property is located is not collateral but is in a flood area.

a. **Flood Insurance.** Based on the Standard Flood Hazard Determination (FEMA Form 086-0-32):

- (1) If any portion of a building that is collateral for the Loan is located in a special flood hazard area, Lender must require Borrower to obtain flood insurance for the building under the NFIP.
- (2) If any equipment, fixtures, or inventory that is collateral for the Loan (“Personal Property Collateral”) is in a building any portion of which is located in a special flood hazard area and that building is collateral for the Loan, Lender must require Borrower to also obtain flood insurance for the Personal Property Collateral under the NFIP.
- (3) If any Personal Property Collateral is in a building any portion of which is located in a special flood hazard area and that building is not collateral for the Loan, Lender must require Borrower to obtain available flood insurance for the Personal Property Collateral. Lender may waive this requirement when the building is not collateral for the Loan if it uses prudent lending standards and includes in the Loan file a written justification that fully explains why flood insurance is not economically feasible or, if flood insurance is not available, the steps taken to determine that it is not available.

Insurance coverage must be at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), whichever is less. (“Maximum limit of coverage available” is the lesser of the maximum limit available under the NFIP for the type of structure or the insurable value of the structure.) Insurance coverage must contain a **MORTGAGEE CLAUSE/LENDER'S LOSS PAYABLE CLAUSE** (or substantial equivalent) in favor of Lender. This clause must provide that any action or failure to act by the debtor or owner of the insured property will not invalidate the interest of Lender and SBA. (Borrower will be ineligible for any future SBA disaster assistance or business loan assistance if Borrower does not maintain any required flood insurance for the entire term of the Loan.)

Real Estate Hazard Insurance (MANDATORY for real estate collateral)

13 CFR 120.160(c)/SOP 50 10 – Collateral Insurance; Real Estate

- b. **Real Estate Hazard Insurance** coverage (including any required additional coverage, such as wind, hail, earthquake, etc., if the business is located in a state that requires additional coverage) on all real estate that is collateral for the Loan in the amount of the full replacement cost. If full replacement cost insurance is not available, coverage must

be for maximum insurable value. Insurance coverage must contain a MORTGAGEE CLAUSE (or substantial equivalent) in favor of Lender. This clause must provide that any action or failure to act by the mortgagor or owner of the insured property will not invalidate the interest of Lender. The policy or endorsements must provide for at least 10 days prior written notice to Lender of policy cancellation.

**Personal Property Hazard Insurance
(MANDATORY for personal property collateral)**

13 CFR 120.160(c)/SOP 50 10 – Collateral Insurance; Personal Property

- c. **Personal Property Hazard Insurance** coverage (including required additional coverage, such as wind, hail, earthquake, etc., if the business is located in a state that requires additional coverage) on all equipment, fixtures or inventory that is collateral for the Loan, in the amount of full replacement costs. If full replacement cost insurance is not available, coverage must be for maximum insurable value. Insurance coverage must contain a LENDER'S LOSS PAYABLE CLAUSE in favor of Lender. This clause must provide that any action or failure to act by the debtor or owner of the insured property will not invalidate the interest of Lender. The policy or endorsements must provide for at least 10 days prior written notice to Lender of policy cancellation.

Full Marine Insurance (OPTIONAL)

- d. **Full Marine Insurance** coverage in the amount of the full insurable value on the following vessel(s): [**List of insured vessels**]; with Lender designated as "Mortgagee". The policy must contain a Mortgagee clause providing that the interest of Lender will not be invalidated by any: (1) act, omission, or negligence of the mortgagor, owner, master, agent or crew of the insured vessel; (2) failure to comply with any warranty or condition out of mortgagee's control; or (3) change in title, ownership or management of the vessel. The policy must include Protection and Indemnity, Breach of Warranty, and Pollution coverage. The policy or endorsements must provide for at least 10 days' prior written notice to Lender of policy cancellation.

Life Insurance (OPTIONAL)

SOP 50 10 - For 7(a) Small Loans, SBA Express and Export Express, lenders may follow their internal policy for similarly sized non-SBA guaranteed commercial loans. For loans processed under standard 7(a) over \$350,000, lenders may follow their internal policy for similarly sized non-SBA guaranteed commercial loans, except if the loan is not fully secured, life insurance is required for the principals of sole proprietorships, single member LLCs, or for businesses otherwise dependent on one owner's active participation, consistent with the size and term of the loan. The type of available collateral may be factored into the determination of the appropriate amount of life insurance. If the principal is uninsurable, lender must obtain written documentation from a licensed insurer.

- e. **Life Insurance**, satisfactory to Lender:
- (1) on the life of [**Name of Individual**] in the amount of \$[**Amount**].
 - (2) on the life of [**Name of Individual**] in the amount of \$[**Amount**].
 - (3) [**add more if needed**]

Lender must obtain a collateral assignment of each policy with Lender as assignee, and Lender must also obtain acknowledgment of the assignment by the Home Office of the Insurer. Lender must ensure that Borrower pays the premium on the policy.

Liability Insurance (OPTIONAL)

- f. **Liability Insurance** in an amount and with an insurance company satisfactory to Lender.

Product Liability Insurance (OPTIONAL)

- g. **Product Liability Insurance** in an amount and with an insurance company satisfactory to Lender.

Dram Shop/Host Liquor Liability Insurance (OPTIONAL)

- h. **Dram Shop/Host Liquor Liability Insurance** in an amount and with an insurance company satisfactory to Lender.

Malpractice Insurance (OPTIONAL)

- i. **Malpractice Insurance** in an amount and with an insurance company satisfactory to Lender.

Disability Insurance (OPTIONAL)

- j. **Disability Insurance** covering [Names of Individuals] in an amount and with an insurance company satisfactory to Lender.

Workers' Compensation Insurance (OPTIONAL)

- k. **Workers' Compensation Insurance** in an amount meeting state law requirements and with an insurance company satisfactory to Lender.

State Specific Insurance (OPTIONAL)

- l. [SELECT or Write your own—State specific insurance requirement, such as Florida Petroleum Liability Insurance (FLIRP)]

**Insurance Requirements—Open Options
(Can be used to add other Insurance Requirements as needed)**

**ENVIRONMENTAL REQUIREMENTS (MANDATORY
for all commercial real property)**

SOP 50 10 and applicable appendices— ENVIRONMENTAL POLICIES AND PROCEDURES.

Lender must submit the Environmental Investigation Report to the SBA Center processing the application unless the loan is Delegated (PLP, SBA Express or Export Express) or a 7(a) Small Loan. The environmental requirements apply to all loans whether or not the report is required to be submitted to the SBA. Before disbursing an SBA Express, Export Express or 7(a) Small Loan, the lender must comply with all environmental requirements, and if the loan is a 7(a) Small Loan, SBA Express or Export Express, Lender 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.

2. Environmental Requirements

- a. Lender may not disburse the Loan until it has:
 - (1) completed the review for potential environmental contamination required in SOP 50 10 on each commercial real property site taken as collateral; and
 - (2) sufficiently minimized the risk from any adverse environmental findings discovered in the Environmental Investigation, or otherwise, as required by SOP 50 10 and applicable appendices.

Insert the following paragraph (b) for non-delegated loans (except 7(a) Small Loans) when Lender did not submit the results of the Environmental Investigation.

- b. Lender must submit the results of the Environmental Investigation to the SBA office listed above for SBA approval prior to disbursement. If Lender or SBA determines from the Environmental Investigation that there is potential environmental contamination, Lender may not disburse the Loan until SBA is satisfied that the risk has been sufficiently minimized. Adverse environmental findings may lead to cancellation of the SBA guarantee.
- c. Lender should consult with the local SBA office where the real property is located to ascertain any state or local environmental requirements.

**Environmental Requirements—Open Options
(Can be used to create Environmental Requirements as needed)**

NOTE: If the Environmental Investigation submitted with the application reveals risks of environmental contamination, and there is a reasonable expectation that any environmental issue can be resolved under the guidelines of SOP 50 10, the Loan Officer, in consultation with counsel, should use this section to add Authorization conditions based on the SOP guidelines.

**BORROWER, GUARANTOR AND OPERATING
COMPANY DOCUMENTS (MANDATORY)**

3. Borrower, Guarantor and Operating Company Documents

The following paragraphs must always appear

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

- (1) **Corporate Documents**—Articles or Certificate of Incorporation (with amendments), any By-laws, Certificate of Good Standing (or equivalent), Corporate Borrowing Resolution, and, if a foreign corporation, current authority to do business within this state.
 - (2) **Limited Liability Company (LLC) Documents**—Articles of Organization (with amendments), Fact Statement or Certificate of Existence, Operating Agreement, Borrowing Resolution, and evidence of registration with the appropriate authority.
 - (3) **General Partnership Documents**—Partnership Agreement, Certificate as to Partners, and Certificate of Partnership or Good Standing (or equivalent), as applicable.
 - (4) **Limited Partnership Documents**—Partnership Agreement, Certificate as to Partners, and Certificate of Partnership or Good Standing (or equivalent), as applicable, Certificate of Limited Partnership, and evidence of registration with the appropriate authority.
 - (5) **Limited Liability Partnership (LLP) Documents**—Partnership Agreement, Certificate as to Partners, Certificate of Partnership or Good Standing (or equivalent) as applicable, and evidence of registration with the appropriate authority.
 - (6) **Trustee Certification**—A Certificate from the trustee warranting that:
 - (a) The trust will not be revoked or substantially amended for the term of the Loan without the consent of Lender/SBA;
 - (b) The trustee has authority to act;
 - (c) The trust has the authority to borrow funds, guarantee loans, and pledge trust assets;
 - (d) If the trust is an Eligible Passive Company, the trustee has authority to lease the property to the Operating Company;
 - (e) There is nothing in the trust agreement that would prevent Lender from realizing on any security interest in trust assets;
 - (f) The trust agreement has specific language confirming the above; and
 - (g) The trustee has provided and will continue to provide Lender/SBA with a true and complete list of all trustors and donors.
 - (7) **Trade Name**—Documentation that Borrower has complied with state requirements for registration of Borrower's or Operating Company's trade name (or fictitious name), if one is used.
- b. Prior to closing, Lender must obtain from Borrower and Operating Company:
- (1) **Ownership**—Evidence that ownership and management have not changed without Lender's approval since the application was submitted.

The Following Paragraphs (2 to 9) are optional

Note: Paragraph (4), (6), (7), (8) and (9) may be repeated if necessary. Paragraph (5), Consideration for Acquisition of Ownership Interest(s), is to be used only in change of ownership transactions when the small business and an individual(s) acquiring the ownership interest in the small business are required to be Co-Borrowers on the Loan.

- (2) **Purchase-Sale Agreement**—Executed Purchase-Sale Agreement [**OPTION**—(to include satisfactory non-compete agreement)].
- (3) **Bulk Sales or Transfer**—Evidence that seller has complied with Bulk Sales or Transfer provisions of state law, if applicable, or has arranged to protect Borrower's purchased assets from claims of seller's creditors.
- (4) **Non-Compete**—Evidence that [**Principal's Name**] does not have a Non-Compete Contract with [**Competitor's Name**].

- (5) **Consideration for Acquisition of Ownership interest(s)**—A certification by the small business Co-Borrower that: (a) the Loan proceeds will be used to acquire all or part of the ownership interest in the small business; (b) the small business Co-Borrower promises to be jointly and severally liable with the individual Co-Borrower(s) for the debt; (c) the Loan assistance constitutes sufficient consideration for such promise; and (d) the small business Co-Borrower waives any defense relating to failure of consideration.
- (6) **Subordinate Funding**—Evidence that Borrower has received the proceeds of a loan from [Name] in the amount of \$[Amount], for a term of not less than [Term] years. This loan must be subordinate to the SBA Loan.
- (7) **Other Funding (loan)**—Evidence that Borrower has received the proceeds of a loan from [Name] in the amount of \$[Amount], for a term of not less than [Term] years.
- (8) **Other Funding (grant or gift)**—Evidence that Borrower has received the proceeds of a grant or a gift from [Name] in the amount of \$[Amount].
- (9) **Other Funding (line of credit)**—Evidence that Borrower has received access to a line of credit from [Name] in the amount of \$[Amount].

**Borrower and OC documents—Open Options
(Can be used to add other Borrower and OC documents as needed)**

OPERATING INFORMATION (MANDATORY)

4. Operating Information

Prior to any disbursement of Loan proceeds, Lender must obtain:

Verification of Financial Information (MANDATORY)

SOP 50 10 – IRS tax transcript /verification of financial information

- a. **Verification of Financial Information**—Lender must submit IRS Form 4506-T to the Internal Revenue Service to obtain federal income tax information on Borrower, or the Operating Company if the Borrower is an EPC, for the last 3 years (unless Borrower or Operating Company is a start-up business). If the business has been operating for less than 3 years, Lender must obtain the information for all years in operation. This requirement does not include tax information for the most recent fiscal year if the fiscal year-end is within 6 months of the date SBA received the application. If the applicant has filed an extension for the most recent fiscal year, Lender must obtain a copy of the extension along with evidence of payment of estimated taxes. Lender must compare the tax data received from the IRS with the financial data or tax returns submitted with the Loan application, and relied upon in approving the Loan. Borrower must resolve any significant differences to the satisfaction of Lender and SBA. Failure to resolve differences may result in cancellation of the Loan.

If the Loan involves a change of ownership, Lender must verify financial information provided by the seller of the business in the same manner as above.

If the IRS responds and the transcript reflects "Record not Found" for any tax year, Lender must follow the procedures detailed in SOP 50 10 to determine what steps must be taken to satisfy the SBA tax verification requirement.

If Lender is processing a loan under its delegated authority and does not receive a response from the IRS or copy of the tax transcript within 10 business days of submitting

the IRS Form 4506-T, then Lender may close and disburse the loan provided that Lender sends a second request following precisely the procedures detailed in SOP 50 10 and Lender performs the verification and resolves any significant differences discovered, even if the Loan is fully disbursed.

Authority to Conduct Business (MANDATORY)

- b. **Authority to Conduct Business**—Evidence that Borrower and Operating Company have an Employer Identification Number and all insurance, licenses, permits and other approvals necessary to lawfully operate the business, including, but not limited to, the ability to operate at the business location.

Flood Hazard Determination (MANDATORY)

SOP 50 10 — SBA Flood Insurance Requirements

- c. **Flood Hazard Determination**—A completed Standard Flood Hazard Determination (FEMA Form 086-0-32).

Lease (OPTIONAL)

Use this provision if any collateral is on leased premises.

Paragraph d. is the general rule; use **paragraph e.** only if Lender has approval to allow a lease of less than the term of the loan; use **paragraph f.** to protect leasehold improvements; use **paragraph g.** if you are trying to keep the Borrower in the present location regardless of where the collateral is located.

SOP 50 10 — Assignment of Lease and Landlord's Waiver

- d. **Lease**—Current lease(s) on all business premises where collateral is located with term, including options, at least as long as the term of the Loan.
- e. **Lease**—Current lease(s) on all business premises where collateral is located, with an adequate term, including options, appropriate to the maturity of the Loan, considering location, type of business, and type of leasehold interest.
- f. **Lease**—Current lease(s) on all business premises where collateral is located with term, including options, at least as long as the term of the Loan plus **[number of years]** years.
- g. **Lease**—Current lease(s) on all business premises with a term, including options to renew exercisable by the Borrower, at least as long as the term of the Loan.

Franchise Documents (Mandatory for all franchise loans)

SOP 50 10 – The following language must be included in the Authorization Boilerplate for all loans involving a Franchise.

- h. **Franchise Documents**—Lender must obtain the executed Franchise Agreement, the SBA Addendum to Franchise Agreement (SBA Form 2462), or the SBA Negotiated Addendum (if applicable), and all other documents the franchisor requires the franchisee to sign prior to any disbursement of Loan proceeds and retain in the loan file. Failure to obtain the properly executed documents may result in a denial of liability on the guaranty.

INJECTION (OPTIONAL)

13 CFR 120.150(f)/SOP 50 10 — Equity Requirements

5. Injection

Lender must obtain evidence that prior to disbursement:

Select one or more of the following paragraphs (a to c)

- a. **Cash Injection**—At least \$[Amount] cash has been injected into the project. This cash is for [Description]. The source of the cash is [identify source].
- b. **Standby Debt Injection**—At least \$[Amount] cash has been injected into the business. This cash is for [Description]. Borrower may obtain this cash from a loan that is Standby Debt until Borrower pays Lender in full. Any such debt must be covered by a standby agreement substantially equivalent to SBA Form 155, with no payment permitted.
- c. **Asset Injection**—Assets described as [Description] with a fair market value of not less than \$[Amount] have been injected into the business as equity capital.

STANDBY AGREEMENT

(Option 1 is MANDATORY if Standby Debt Injection is selected above)

SOP 50 10 — SBA Standby Debt Injection Policy and Standby Agreements. Option 1 is mandatory when standby debt is being considered as part of Borrower’s Injection. Options 2 to 5 may be used when standby debt will be part of the project, but is not being considered as part of Borrower’s Injection.

6. Standby Agreement

The following section must be repeated for each standby creditor

- a. Lender to obtain Standby Creditor’s Agreement from [Name], for \$[Amount], plus all accrued and future interest (Standby Debt).

Select the following repayment options

Option 1

No payment of principal or interest is to be made on Standby Debt during the term of the Loan.

Option 2

Monthly payments of interest on Standby Debt, at [Rate]% per year, may be made if Borrower is not in default under the Note.

Option 3

Monthly payments of \$[Amount], consisting of principal and interest on Standby Debt, at [Rate]% per year, may be made if Borrower is not in default under the Note.

Option 4

Monthly payments of \$[Amount], consisting of principal and interest on Standby Debt, at [Rate]% per year, beginning [Begin Date] may be made if Borrower is not in default under the Note.

Option 5

[(Write Your Own)] may be made if Borrower is not in default under the Note.

The following paragraph must appear for each standby agreement

Standby Creditor must subordinate any lien rights in collateral securing the Loan to Lender's rights in the collateral, and take no action against Borrower or any collateral securing the Standby Debt without Lender's consent. Lender must attach a copy of the Standby Note evidencing the Standby Debt to the Standby Creditor's Agreement. Lender may use its own form or SBA Form 155.

APPRAISAL (OPTIONAL)

Sec. 7(a)(29) of the Small Business Act; SOP 50 10 - Real Estate Appraisal

7. Appraisal

Prior to disbursement, and in accordance with SOP 50 10, Lender must obtain:

The 4 following options may be used several times if necessary

- a. **Real Estate Appraisal** on the real property located at **[Address]**, showing a fair market value of at least **[\$Amount]**.
- b. **Equipment Appraisal** on the equipment (and fixtures if not included in a real estate appraisal) described as **[Description]**, showing a fair market value of at least **[\$Amount]**.
- c. **Marine Survey and Appraisal** on the vessel named **[Name]**, showing a fair market value of at least **[\$Amount]**.
- d. **Aircraft Appraisal** on the following aircraft—Make: **[Make]**, Model: **[Model]**, Year: **[Year]**—showing a fair market value of at least **[\$Amount]**.

BUSINESS VALUATION (OPTIONAL)

SOP 50 10 Business Valuation Requirements — Change of Ownership. For 7a applications submitted to the LGPC, the business valuation must be submitted as part of the loan application; for applications processed under a Lender's delegated authority, the business valuation may be obtained and reviewed after the issuance of an SBA loan number and prior to closing. If Lender is processing the application under delegated authority and requests the business valuation after issuance of an SBA loan number, the credit memorandum must include an estimate of the value of the business and must be updated after receipt of the business valuation to include a comparison of the loan amount and the business valuation.

8. Business Valuation

- a. Prior to disbursement, and in accordance with SOP 50 10, Lender must request and obtain a business valuation of **[name of business]**, showing a value of **[\$Amount]**, exclusive of the appraised value of real estate and equipment.
- b. Lender must obtain a copy of the financial information relied upon by the individual who performed the business valuation and verify that information against the seller's IRS transcripts to ensure the accuracy of the information.
- c. Any amount in excess of the business valuation may not be financed with the SBA guaranteed loan.

***CONSTRUCTION PROVISIONS
(MANDATORY if project includes construction)***

13 CFR 120.174 and 13 CFR 120.200. SOP 50 10 — Construction Loan, Earthquake Hazards and Bonding Requirements

For 7a Wizard users: This section is automatically inserted by the 7a wizard if Use of Proceeds (G) includes paragraphs 4, 5, 6, 7 or 9.

9. Construction Provisions

- a. **Building Standards:** In the construction of a new building or an addition to an existing building, the construction must conform with the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings" (NEHRP), or a building code that SBA has identified as having substantially equivalent provisions. Lender must obtain from Borrower evidence of compliance with these requirements. Examples of evidence include a certificate issued by a licensed building architect, construction engineer or similar professional, or a letter from a state or local government agency stating that an occupancy permit is required and that the local building codes upon which the permit is based include the Seismic standards.
- b. Lender may charge Borrower a one-time fee not to exceed 2% of the portion of the Loan designated for construction. The actual fee must not exceed the cost of the extra service.
- c. Prior to closing, if an "as completed" appraisal was obtained prior to construction and the SBA guaranteed loan was not used to cover the construction period, Lender must obtain a statement from the appraiser, general contractor, project architect, or construction management firm after construction is completed that the building was built with only minor deviations (if any) from the plans and specifications upon which the original estimate of value was based. If the Lender cannot obtain such a statement, then the lender may not close the loan without SBA's prior written permission.

If the SBA guaranteed loan was used to cover the construction period, after construction is completed, Lender must notify the appropriate SBA CLSC of any deviation(s) and work with the SBA CLSC to determine an appropriate course of action, including securing additional collateral. Lender's notification to SBA must comply with SOP 50 10.

If the appraiser is unable to issue a statement that the building was built with only minor deviations (if any) from the plans and specifications upon which the original estimate of value was based, but is able to provide a new appraisal demonstrating that the market value meets or exceeds the original estimate of value, then no additional action by Lender is necessary.

Select one of the 3 following options

**Option 1—Construction Financing with SBA Guarantee;
Construction Component \$350,000 or less**

- d. **Compliance Form**—Lender must obtain SBA Form 601, Applicant's Agreement of Compliance, for projects where the construction costs exceed \$10,000.
- e. **Construction Safeguards**—Lender must take all normal construction Loan safeguards appropriate for the Loan. These safeguards may include reviewing plans and specifications, cost breakdowns, bonds, contracts, and builder's controls, and imposing necessary changes or requirements.

**Option 2—Construction Financing with SBA Guarantee;
Construction Component more than \$350,000**

- f. Prior to the commencement of any construction, Lender must obtain from Borrower:
 - (1) **Bonds**—Evidence that the licensed contractor has furnished a 100% performance bond and labor and materials payment bond. Only a corporate surety approved by the Treasury Department using an American Institute of Architect's form or comparable coverage may issue these bonds. Only Borrower may be named as obligee on the bonds.
 - (2) **Insurance**—Evidence that licensed contractor carries appropriate Builder's Risk and Worker's Compensation Insurance.

- (3) **Injection**—Evidence that Borrower has injected the required funds into the project prior to disbursement of the Loan, if Borrower is injecting funds into the construction project.
 - (4) **Plans and Specifications**—A copy of the final plans and specifications for Lender review.
 - (5) **Construction Contract**—One (1) copy of a Construction Contract with an acceptable licensed contractor at a specified price not to exceed \$[Amount]. The contract must include an agreement that Borrower will not order or permit any material changes in the approved plans and specifications without prior written consent of Lender and the surety providing the required bonds.
- g. Lender must:
- (1) **Cost Overruns**—Obtain evidence of Borrower’s ability to pay cost overruns or additional construction financing expenses prior to approving any contract modification. Lender and SBA are not obligated to increase the loan to cover cost overruns.
 - (2) **Inspection**—Make interim and final inspections to determine that construction conforms to the plans and specifications.
 - (3) **Codes and Permits**—Obtain evidence that the building, when completed, will comply with all state and local building and zoning codes, and applicable licensing and permit requirements.
 - (4) **Compliance Form**—Obtain SBA Form 601, Applicant's Agreement of Compliance.
 - (5) **Lien Waivers** —Obtain lien waivers or releases from all materialmen, contractors, and subcontractors involved in the construction.
 - (6) **Construction Safeguards**—Take all normal other construction loan safeguards appropriate for the Loan.

Option 3—Construction Financing without SBA Guarantee

- h. **Financing**—Interim financing provided by [name] at its own risk.
- i. **Required Documentation**—At or prior to closing the Loan, if any proceeds will be used to repay interim construction financing, Lender must obtain evidence that:
- (1) contractor has substantially completed construction;
 - (2) all elements of the construction are paid in full;
 - (3) Borrower or Operating Company occupies (or will shortly occupy in the case of an escrow closing) the property;
 - (4) the property complies with all zoning and necessary governmental permit and licensing requirements; and
 - (5) no unpaid labor or material liens exist.

CERTIFICATIONS AND AGREEMENTS (MANDATORY)

10. Certifications and Agreements

For Pari Passu Loan

- a. Additional Financing provided by [Name of "Pari Passu" Lender] ("Pari Passu Lender")
- (1) Pari Passu Lender will provide additional financing to the Borrower at or about the same time for the same or a similar purpose financed by this Loan in the amount of \$[PariPassuAmount] that will not be guaranteed by SBA (hereafter called the “Pari Passu Loan”). Both loans must be secured with the same collateral. Both loans

must have a shared lien (“Pari Passu”) on all collateral securing either loan and a shared position with respect to any recovery from any other source, such as insurance or set-off. The outstanding principal balance of each loan at the time of default (as defined in this paragraph) on either loan will determine how to calculate the pro-rata sharing of each dollar collected after default. Default is defined as any condition or event which would constitute a default under the terms and conditions of either loan, even when such a condition or event has not yet been declared a default.

- (2) Pari Passu Loan must include a cross default provision between the Pari Passu Loan and this Loan. The Pari Passu Lender must give the Lender written notice of default within 30 days of default on the Pari Passu Loan.
- (3) Pari Passu Loan must not include the following in its note or loan documents:
 - (a) A provision to allow future advances except advances made for the reasonable costs of collection, maintenance, and protection of Pari Passu Lender’s shared lien.
 - (b) A provision that permits the Pari Passu loan be cross-collateralized with other non-SBA financing provided by the Pari Passu Lender to Borrower (and/or Operating Company, if the Borrower on this Loan is an Eligible Passive Company).
 - (c) A provision that permits the Pari Passu Lender to make demand on the Pari Passu Loan for reasons other than default.
- (4) If the Pari Passu Lender transfers or assigns all or part of the Pari Passu Loan, the Pari Passu Lender must:
 - (a) Notify all transferees and assigns of these requirements applicable to the Pari Passu Loan, which also must bind any transferee or assignee.
 - (b) Notify the Lender of the transfer or assignment within 30 days of the transfer or assignment of the Pari Passu Loan.
- (5) If the Pari Passu Loan is not made by the Lender then, prior to disbursement of this Loan, Lender must execute an Inter-Creditor Agreement with the Pari Passu Lender that includes the requirements identified in paragraphs (1), (2), (3), and (4) above and contains no provisions that conflict with or modify these requirements.

The following paragraph always appears

- b. Prior to disbursement, Lender must require Borrower and Operating Company to certify that:

Receipt of Authorization (MANDATORY)

- (1) **Receipt of Authorization**—Borrower and Operating Company have received a copy of this Authorization 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.

- (f) If the small business defaults on the SBA-guaranteed loan and SBA suffers a loss, the names of the small business and the guarantors of the SBA-guaranteed loan will be referred for listing in the Credit Alert Verification Reporting System (CAIVRS) database, which may affect their eligibility for further financial assistance.

Adverse Change (MANDATORY)

- (2) There has been no adverse change in Borrower's (and Operating Company's) financial condition, organization, operations, or fixed assets since the date the Loan application was signed.

Child Support (MANDATORY)

13 CFR 120.171/SOP 50 10 - Borrower Certifications; Child Support

- (3) **Child Support**—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 (a) administrative order, (b) court order, or (c) repayment agreement requiring payment of child support.

Current Taxes (MANDATORY)

SOP 50 10 - Borrower Certifications; Current Taxes

- (4) **Current Taxes**—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.

Environmental (MANDATORY)

SOP 50 10 – Borrower and Operating Company (if applicable) Certifications; Environmental

- (5) **Environmental**—For any real estate pledged as collateral for the Loan or where the Borrower or Operating Company (if applicable) 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 and SBA 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 and 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 and Operating Company to execute a separate indemnification agreement).

Credit Card Debt (MANDATORY for Refinancing Credit Card Debt)

SOP 50 10 — Policies Regarding Debt Refinancing and Borrower Certifications

- (6) **Business Related Purpose**—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).

The following paragraph always appears

- c. Prior to disbursement, Lender must require Borrower and Operating Company to certify that they will:

Reimbursable Expenses (MANDATORY)

13 CFR 120.221-222/SOP 50 10 — SBA policy on Fees Lenders may charge; Prohibited Fees

- (1) **Reimbursable Expenses**—Reimburse Lender for expenses incurred in the making and administration of the Loan.

Books, Records and Reports (MANDATORY)

SOP 50 10 – Books and Records

- (2) Books, Records, and Reports-
 - (a) Keep proper books of account in a manner satisfactory to Lender;
 - (b) Furnish [~~OPTION—compiled—OR—reviewed—OR—audited~~] year-end statements to Lender within [**number of days, default is 120**] days 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.

Equal Opportunity (MANDATORY)

13 CFR 120.176/SOP 50 10 - Equal Opportunity

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

American-made Products (MANDATORY)

This provision is required by Congress and is included in SBA's appropriations laws.

- (4) **American-made Products**—To the extent practicable, purchase only American-made equipment and products with the proceeds of the Loan.

Taxes (MANDATORY)

SOP 50 10 – Pay all taxes

- (5) **Taxes**—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)

Insert paragraph (6) or (7) if Loan proceeds include purchase or renovation of an **existing** building. **Use (6) for non EPC loans; use (7) for EPC loans.**

OR

Insert paragraph (8) or (9) if Loan proceeds include construction of a **new** building. **Use (8) for non EPC loans; use (9) for EPC loans.**

13 CFR 120.10—"Rentable Property" is the total square footage of all buildings or facilities used for business operations.

13 CFR 120.131—SBA Occupancy Policy; SOP 50 10

For 7a Wizard users: When the occupancy options are selected, the wizard automatically inserts either paragraph (7) or (9) for EPC loans or (6) or (8) for non-EPC loans.

- (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**—(a) 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.

Leasing (MANDATORY)

- (10) **Leasing**—During the life of the loan, the real estate pledged as Collateral for the Loan or where the Borrower or Operating Company conducts its business operations will not be leased to or occupied by any business that Borrower or Operating Company knows is engaged in any activity that is illegal under federal, state or local law or any activity that can reasonably be determined to support or facilitate any activity that is illegal under federal, state, or local law.

**Certifications and Agreements—Open Options I
(Use to add other Certifications and Agreements as needed)**

The following paragraph always appears

- d. Lender must require Borrower and Operating Company to certify that they will not, without Lender's prior written consent:

Distribution (MANDATORY)

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

Ownership Changes (MANDATORY)

- (2) **Ownership Changes**—Change the ownership structure or interests in the business during the term of the Loan.

Transfer of Assets (MANDATORY)

- (3) **Transfer of Assets**—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.

Fixed Asset Limitation (OPTIONAL)

SOP 50 10 – Limitations on acquiring additional fixed assets

- (4) **Fixed Asset Limitation**—Acquire by purchase or lease agreement any fixed assets

(totaling more than \$[Amount] in any year).

Location Limitation (OPTIONAL)

- (5) **Location Limitation**—Acquire by purchase or by lease, any additional locations.

Limitation on Compensation (OPTIONAL)

SOP 50 10 – Salary limitations

- (6) **Limitation on Compensation**—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 \$[Amount].

**Certifications and Agreements—Open Options II
(Use to add other Certifications and Agreements as needed)**

ADMINISTRATOR
SMALL BUSINESS ADMINISTRATION

[Approval Date]

By: [Name, Title]

Date

[MUST APPEAR if PLP loan—a Preferred Lender, as Lender and as an agent of and on behalf of the SBA for the purpose of executing this Authorization.]

The following appears for non-PLP loans only

In consideration of SBA's guarantee of the Loan to be made by Lender to Borrower, Lender accepts the above conditions.

[Lender's Name]

By: (Name, Title)

Date

Appendix A

Standard Collateral Conditions

PLEASE READ THIS FIRST !

This appendix is used for both 7(a) and 504 Authorizations
All references to “Lender” in this appendix apply only to the 7(a) Authorization.
For 504 authorizations, “CDC” will replace “Lender”.

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A. Guarantees

SBA generally takes a full unconditional guarantee.

13 CFR 120.160(a)/SOP 50 10 - SBA requirements for Guarantees. Holders of 20% or more ownership interest must guarantee the loan. Each spouse owning less than 20% must guarantee the loan when the combined ownership interest of both spouses is 20% or more. When deemed necessary for credit or other reasons, SBA or, for a loan processed on a delegated basis, the Lender, may require other appropriate individuals or entities to provide full or limited guaranties of the loan without regard to the percentage of their ownership interests, if any.

If this is an EPC/OC loan, the Operating Company must guarantee the loan if it is not a Co-Borrower and each holder of a 20% or more ownership interest in either the EPC or OC must guarantee the loan. If the EPC is a trust, then all trustors and donors must guarantee the loan.

See also SBA Inst 148/148L (Instructions for Use of SBA Form 148 and 148L)

1. Full Unsecured Guarantee

Select this paragraph for 504 loans

Guarantee on SBA Form 148, by [Name of guarantor], resident in [State/Country Name].

Select this paragraph for 7a, EWCP, and CAPLine loans

Guarantee on SBA Form 148 or equivalent lender's form, by [Name of guarantor], resident in [State/Country Name].

2. Full Secured Guarantee

Select this paragraph for 504 loans

Guarantee on SBA Form 148, by [Name of guarantor], resident in [State/Country Name].

Select this paragraph for 7a, EWCP, and CAPLine loans

Guarantee on SBA Form 148 or equivalent lender's form, by [Name of guarantor], resident in [State/Country Name].

Note: When securing a guarantee, references to "Borrower" should be replaced with "Guarantor".

Secured by: **[Reverts to full list of collateral conditions to select]**

3. Limited Unsecured Guarantee

Select this paragraph for 504 loans

Limited Guarantee on SBA Form 148 (use 148L if available), by [Name of guarantor], resident in [State/Country Name].

Select this paragraph for 7a, EWCP, and CAPLine loans

Limited Guarantee on SBA Form 148L or equivalent lender's form, by [Name of guarantor], resident in [State/Country Name].

Select one and only one of the following paragraphs for all loans

BALANCE REDUCTION LIMITATION: The Guarantee is of all amounts owing under the Note, and will continue until the total of all amounts owing under the Note is reduced below \$[Amount], at which time Guarantor will be released from liability if the Note is not in default.

PRINCIPAL REDUCTION LIMITATION: The Guarantee is of all amounts owing under the Note, and will continue until the outstanding principal balance of the Note is reduced below \$[Amount], at which time Guarantor will be released from liability if the Note is not in default.

MAXIMUM LIABILITY LIMITATION: The Guarantee is limited to Guarantor's payment of \$[Amount].

PERCENTAGE LIMITATION: The Guarantee is limited to Guarantor's payment of [Percent]% of all amounts owing under the Note at the time demand is first made on Guarantor, plus the same percentage of any accrued interest and other costs charged to the Note after demand, until Guarantor fully performs this Guarantee.

TIME LIMITATION: The Guarantee is of all amounts owing under the Note. The Guarantee will continue until [number of years] year(s) after the date of the Note (the "Guarantee Period"). If Borrower is in default at the end of the Guarantee Period, the Guarantee will continue until all defaults are cured.

COMMUNITY PROPERTY OR SPOUSAL INTEREST LIMITATION: The Guarantee is limited to Guarantor's community property or spousal interest in collateral pledged to secure the Note or any guarantee.

4. Limited Secured Guarantee

Select this paragraph for 504 loans

Limited Guarantee on SBA Form 148 (use 148L if available), by [Name of guarantor], resident in [State/Country Name].

Select this paragraph for 7a, EWCP, and CAPLine loans

Limited Guarantee on SBA Form 148L or equivalent lender's form, by [Name of guarantor], resident in [State/Country Name].

Select one and only one of the following paragraphs for all loans

BALANCE REDUCTION LIMITATION: The Guarantee is of all amounts owing under the Note, and will continue until the total of all amounts owing under the Note is reduced below \$[Amount], at which time Guarantor will be released from liability if the Note is not in default.

PRINCIPAL REDUCTION LIMITATION: The Guarantee is of all amounts owing under the Note, and will continue until the outstanding principal balance of the Note is reduced below \$[Amount], at which time Guarantor will be released from liability if the Note is not in default.

MAXIMUM LIABILITY LIMITATION: The Guarantee is limited to Guarantor's payment of \$[Amount].

PERCENTAGE LIMITATION: The Guarantee is limited to Guarantor's payment of [Percent]% of all amounts owing under the Note at the time demand is first made on Guarantor, plus the same percentage of any accrued interest and other costs charged to the Note after demand, until Guarantor fully performs this Guarantee.

TIME LIMITATION: The Guarantee is of all amounts owing under the Note. The Guarantee will continue until [number of years] year(s) after the date of the Note (the "Guarantee Period"). If Borrower is in default at the end of the Guarantee Period, the Guarantee will continue until all defaults are cured.

COLLATERAL/RECOURSE LIMITATION: The Guarantee is limited to the amount Lender obtains from the following collateral pledged by Guarantor: [Collateral]

COMMUNITY PROPERTY OR SPOUSAL INTEREST LIMITATION: The Guarantee is limited to Guarantor's community property or spousal interest in collateral pledged to secure the Note or any guarantee.

The following always appears

Note: When securing a guarantee, references to "Borrower" should be replaced with "Guarantor".

Secured by: [Reverts to full list of collateral conditions to select]

B. Realty And Leaseholds

1. Lien On Land And Improvements

Note: Some of the options in this collateral condition will vary according to the state in which the real property is located. Refer to Appendix B for more information. For agricultural land, user should choose "commercial".

The following [Option – Shared] must appear in 7a, 504 and EWCP Authorizations only if shared lien position.

[Option – Shared] [SELECT - First, Second, Third, Fourth, Fifth] [SELECT - Deed of Trust, Mortgage or other state specific instrument] (including due on sale clause [OPTION - and water rights, if any,] [OPTION - and assignment of rents]) on land and improvements located at [address of property]. This property is [SELECT - residential - OR - commercial]. [OPTION - The lien is limited to \$[amount].] [OPTION – The collateral property is the [Borrower's/Guarantor's] primary residence.]

The following must appear if first lien position.

a. subject to no other liens.

The following must appear if junior lien position.

b. subject only to prior lien(s) as follows:

- (1) First: **[name of lienholder]** **[SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount]**, with a revolving provision limited to a total principal outstanding of **[\$[amount]]**.
- (2) Second: **[name of lienholder]** **[SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount]**, with a revolving provision limited to a total principal outstanding of **[\$[amount]]**.
- (3) **[etc., up to four]**.

The following must appear in 504 Authorizations only if shared lien position.

- c. The lien securing the 504 Loan is a shared lien pari passu with that of **[name of lender]** in the amount of **[\$[amount]**. An intercreditor agreement, satisfactory to CDC and SBA, must be executed. The agreement (or a memorandum thereof) must be recorded.

The following must appear in 7a Authorizations only if shared lien position.

- d. The lien securing the Loan is a shared lien pari passu with **[SELECT – Lender's non-SBA loan - OR - [name of lender]]** in the amount of **[\$[amount]**. Lender must follow the requirements in the pari-passu provision below.

The following paragraphs are required as set forth in Appendix B.

Note : availability of options may vary depending on the state in which the real property is located - see Appendix B for more information.

- e. Any prior lien(s) that is (are) open ended as to future advances must be closed, in writing, according to applicable state law. The revolving line(s) of credit set out above, if any, must be limited in writing to the amount stated.
- f. Lender must obtain a written agreement from prior lienholders to provide Lender with **[number of days]** days written notice before commencing foreclosure of prior lien.
- g. Lender to file a Request for Notice pursuant to state law. For 504 Loans, notice required to CDC and SBA CLSC.
- h. Written waiver of homestead required. (Residential property only.)
- i. Statement of non-homestead required. (Residential property only.)
- j. Written waiver of Business Homestead required if real property collateral is owned by an individual or an individual and spouse.
- k. Lender must obtain from prior lienholders written verification (1) of amount owing on prior obligation, (2) that prior obligation is current on payments, and (3) that prior obligation is not otherwise in default.
- l. Written waiver of redemption rights is required. (Non-residential property only.)
- m. Statutory Condition and the Statutory Power of Sale language required.

Select one and only one of the following choices, from (1) to (8)

- n. Evidence of title and priority of lien must be based upon:
 - (1) ALTA Loan Policy, insuring lender and assigns, policy to be without standard exceptions (“extended ALTA”) and without arbitration clause.
[OPTION - in the amount of \$[Amount].]

[OPTION - with [specify required endorsements] endorsements,]

[OPTION - policy to be without standard survey exception.]

[OPTION - policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]

[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]

[OPTION - Write Your Own]

- (2) Mortgagee's Title Policy insuring lender and assigns

[OPTION - in the amount of \$[Amount].]

[OPTION - policy to be without standard survey exception.]

[OPTION - policy to be without exception to Homestead, Survey or Taxes,]

[OPTION - policy must reflect that all taxes and municipal liens have been brought current or paid.]

[OPTION - Such policy must contain no exceptions for parties in possession, mechanic's or materialman's liens, or matters which would be disclosed by an accurate survey.]

[OPTION - Policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]

[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]

- (3) Attorney's certificate of title or title opinion in favor of lender and assigns certifying that lender has obtained the required lien position.

[OPTION - Certificate or opinion will not contain a survey exception or an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]

[MUST APPEAR if R/E located in VT - Certificate or opinion must address that the real property and its use are in compliance with state and federal environmental laws and regulations, as well as zoning, subdivision and land use laws, as determinable from all relevant publicly issued, filed or recorded governmental documents.]

- (4) Title insurance customarily obtained for similar transactions in this jurisdiction.
- (5) Title and/or Lien Search or other evidence of proper ownership and lien position.
- (6) CLTA Loan Policy.
- (7) Limited Title Policy.
- (8) Property, Judgment and Lien Report indicating that lender has obtained the required position.

In addition to the above, a "write your own" option is provided in case a survey or other endorsement is required

- (9) **[Write Your Own]**

*The following paragraphs must appear in **504 Authorizations only** when collateral is Project Property.*

- o. CDC must obtain in recordable form written subordination agreements from any tenants occupying any of the Project real property required as collateral. Appropriate subordination language may be included in the Lease as an alternative.
- p. In addition at Closing in states where a survey is customarily provided for title insurance coverage, Borrower must also provide a survey certified to SBA/CDC, or a prior survey acceptable to SBA/CDC and the title insurer and a satisfactory survey affidavit of no change.
- q. At the time of Closing, either:
 - (1) there must be no contractor's, mechanic's or materialman's lien on the Property, including a lien which might possibly be filed after Closing, which would impair the stated priority of the CDC/SBA lien, and there must be no other circumstances adversely affecting the value of the property; or,
 - (2) no exception for these in the title insurance commitment/policy, or
 - (3) the title insurance company must provide affirmative coverage to CDC and SBA over any such exceptions, affording reasonably adequate protection against material loss arising from such exceptions. In addition, the title insurance company must provide such endorsements as CDC or SBA deems necessary to protect CDC and SBA reasonably against material loss arising from any other exceptions.

2. Collateral Assignment of (or lien on) Purchaser's Interest in Land Contract of Sale

Note: Some of the options in this collateral condition will vary according to the state in which the real property is located. Refer to Appendix B for more information.

Collateral Assignment of (or lien on) Purchaser's Interest in Land Contract of Sale between **[Seller]** (Seller) and **[Purchaser]** (Purchaser), creating a valid lien on purchaser's interest covering real estate located at **[address of property]**, and its proceeds. **[OPTION - The lien is limited to \$[amount].]**

- a. The outstanding balance due Seller under contract is **[\$[Amount owed to seller].]**
- b. Lender must obtain from seller written verification (1) of amount owing on prior obligation, (2) that prior obligation is current on payments, and (3) that prior obligation is not otherwise in default.
- c. Assignment must contain the following conditions: (1) Right of reassignment; (2) Seller's consent; (3) Seller's agreement to give 60 days notice of forfeiture with right to cure; and (4) Due on sale clause.
- d. Assignment must be subject only to the interest of Seller **[OPTION - and [nature of interest(s) and amount(s)]]**.

The following paragraph is optional

- e. Lender must cause deed to be held in escrow.

Select one and only one of the following choices, from (1) to (8)

- f. Evidence of title and priority of lien must be based upon:
- (1) ALTA Loan Policy, insuring lender and assigns, policy to be without standard exceptions (“extended ALTA”) and without arbitration clause.
[OPTION - in the amount of \$[Amount].]
[OPTION - with [specify required endorsements] endorsements,]
[OPTION - policy to be without standard survey exception.]
[OPTION - Policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]
[OPTION - Write Your Own]
 - (2) Mortgagee’s Title Policy insuring lender and assigns
[OPTION - in the amount of \$[Amount].]
[OPTION - policy to be without standard survey exception,]
[OPTION - policy to be without exception to Homestead, Survey or Taxes,]
[OPTION - Policy must reflect that all taxes and municipal liens have been brought current or paid.]
[OPTION - Such policy must contain no exceptions for parties in possession, mechanic’s or materialman’s liens, or matters which would be disclosed by an accurate survey.]
[OPTION - Policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]
 - (3) Attorney’s certificate of title or title opinion in favor of lender and assigns certifying that lender has obtained the required lien position.
[OPTION - Certificate or opinion will not contain a survey exception or an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Certificate or opinion must address that the real property and its use are in compliance with state and federal environmental laws and regulations, as well as zoning, subdivision and land use laws, as determinable from all relevant publicly issued, filed or recorded governmental documents.]
 - (4) Title insurance customarily obtained for similar transactions in this jurisdiction.
 - (5) Title and/or Lien Search or other evidence of proper ownership and lien position.
 - (6) CLTA Loan Policy.
 - (7) Limited Title Policy.
 - (8) Property, Judgment and Lien Report indicating that lender has obtained the required position.

In addition to the above, a "write your own" option is provided in case a survey or other endorsement is required

(9) [Write Your Own]

3. Collateral Assignment of (or lien on) Seller's Interest in Land Contract of Sale

Collateral Assignment of (or lien on) Seller's Interest in Land Contract of Sale between **[Seller]** (Seller) and **[Purchaser]** (Purchaser), creating a valid lien on Seller's interest covering real property sold by the Seller to Purchaser and located at **[address of property]**, and its proceeds.

- a. The outstanding balance due Seller under contract is **[\$Amount owed seller]**.
- b. Assignment must contain the following conditions: (1) Seller may receive payments from Purchaser so long as the Loan is not in default; (2) Seller must agree to direct Purchaser to make all future payments to Lender upon Loan default; and (3) Seller must agree that payment is due upon sale of seller's interest.
- c. Assignment must be subject only to the interest of Purchaser **[OPTION - and [nature of interest(s) and amount(s)]]**.

4. Assignment of Beneficial Interest and Power of Direction in Land Trust

Note: Some of the options in this collateral condition will vary according to the state in which the real property is located. Refer to Appendix B for more information.

Assignment of Beneficial Interest and Power of Direction in Land Trust holding title to real estate located at **[Property Address]**.

The 2 following paragraphs a and b are optional

- a. Subject only to the prior assignment(s) held by **[Prior Assignee]**, not exceeding **[\$Amount]**.
- b. Fee title to real estate must be subject only to prior lien(s) held by **[prior lienholders]**, not exceeding **[\$Amount]**.

Select one and only one of the following paragraphs c and d

- c. Title and lien position to be supported by ALTA Owner's Title Insurance Policy and current trust record.
- d. Evidence of title and lien position is required, in form of tract book search or attorney's letter of opinion and current trust record.

5. Leasehold Instrument on Building Constructed on Leased Land

The following [Option – Shared] must appear in 7a, 504 and EWCP Authorizations only if shared lien position.

[Option – Shared] [SELECT - First, Second, etc.] Leasehold [SELECT - Deed of Trust, Mortgage or other state specific instrument] (including due on sale clause) on Building(s) Constructed on Leased Land located at **[address of property]**. This property is **[SELECT - commercial]**. **[OPTION - The lien is limited to \$[amount].]**

The following must appear if first lien position.

- a. subject to no other liens.

The following must appear if junior lien position.

- b. subject only to prior lien(s) as follows:
- (1) First: **[name of lienholder] [SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount], with a revolving provision limited to a total principal outstanding of \$[amount]]**.
 - (2) Second: **[name of lienholder] [SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount], with a revolving provision limited to a total principal outstanding of \$[amount]]**.
 - (3) **[etc., up to four]**.

The following must appear in 504 Authorizations only if shared lien position.

- c. The lien securing the 504 Loan is a shared lien pari passu with that of **[name of lender]** in the amount of **[\$[amount]]**. An intercreditor agreement, satisfactory to CDC and SBA, must be executed. The agreement (or a memorandum thereof) must be recorded.

The following must appear in 7a Authorizations only if shared lien position.

- d. The lien securing the Loan is a shared lien pari passu with **[SELECT – Lender's non-SBA loan - OR - [name of lender]]** in the amount of **[\$[amount]]**. Lender must follow the requirements in the pari-passu provision below.

The following paragraphs always appear

- e. Remaining term of lease, including options to renew exercisable solely by the Borrower, must cover term of Loan **[OPTION - plus [number of years] year(s)]**.
- f. Lease must contain clauses providing for the following:
- (1) Tenant's right to encumber leasehold estate;
 - (2) No modification or cancellation of lease without lender's or assignee's approval;
 - (3) Lender's or assignee's right to acquire the leasehold at foreclosure sale or by assignment and right to reassign the leasehold estate (along with right to exercise any options) by lender or successors; lessor may not unreasonably withhold, condition or delay the reassignment;
 - (4) Lender's or assignee's right to sublease;

- (5) Lender's or assignee's rights upon default of the tenant or termination of the lease. This would include notice, extended time to cure (at least 60 days), time allotted for foreclosure and sale, and procedures for non-monetary defaults;
 - (6) Lender's or assignee's rights to hazard insurance proceeds resulting from damage to improvements;
 - (7) Lender's or assignee's right to share in condemnation proceeds.
- g. Lender must obtain Lessor's written consent to the leasehold **[Type of Instrument - same as above]** and a collateral assignment of lease.

The following paragraphs are required as set forth in Appendix B

Note: availability of options may vary depending on the state in which the real property is located - see Appendix B for more information.

- h. Any prior lien(s) that is (are) open ended as to future advances must be closed, in writing, according to applicable state law. The revolving line(s) of credit set out above, if any, must be limited in writing to the amount stated.
- i. Lender must obtain a written agreement from prior lienholders to provide Lender with **[number of days]** days written notice before commencing foreclosure of prior lien.
- j. Lender to file a Request for Notice pursuant to state law. For 504 loans, notice required to CDC and SBA CLSC.
- k. Written waiver of homestead required. (Residential property only.)
- l. Statement of non-homestead required. (Residential property only.)
- m. Written waiver of Business Homestead required if real property collateral is owned by an individual or an individual and spouse.
- n. Lender must obtain from prior lienholders written verification (1) of amount owing on prior obligation, (2) that prior obligation is current on payments, and (3) that prior obligation is not otherwise in default.
- o. Written waiver of redemption rights is required. (Non-residential property only.)
- p. Statutory Condition and the Statutory Power of Sale language required.

Select one and only one of the following choices, from (1) to (8)

- q. Evidence of title and priority of lien must be based upon:
- (1) ALTA Loan Policy, insuring lender and assigns, policy to be without standard exceptions ("extended ALTA") and without arbitration clause.
[OPTION - in the amount of \$[Amount].]
[OPTION - with [specify required endorsements] endorsements.]
[OPTION - policy to be without standard survey exception.]
[OPTION - Policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]
[OPTION - Write Your Own]

- (2) Mortgagee's Title Policy insuring lender and assigns
[OPTION - in the amount of \$[Amount].]
[OPTION - policy to be without standard survey exception.]
[OPTION - policy to be without exception to Homestead, Survey or Taxes,]
[OPTION - Policy must reflect that all taxes and municipal liens have been brought current or paid.]
[OPTION - Such policy must contain no exceptions for parties in possession, mechanic's or materialman's liens, or matters which would be disclosed by an accurate survey.]
[OPTION - Policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]
- (3) Attorney's certificate of title or title opinion in favor of lender and assigns certifying that lender has obtained the required lien position.
[OPTION - Certificate or opinion will not contain a survey exception or an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Certificate or opinion must address that the real property and its use are in compliance with state and federal environmental laws and regulations, as well as zoning, subdivision and land use laws, as determinable from all relevant publicly issued, filed or recorded governmental documents.]
- (4) Title insurance customarily obtained for similar transactions in this jurisdiction.
- (5) Title and/or Lien Search or other evidence of proper ownership and lien position.
- (6) CLTA Loan Policy.
- (7) Limited Title Policy.
- (8) Property, Judgment and Lien Report indicating that lender has obtained the required position.

In addition to the above, a "write your own" option is provided in case a survey or other endorsement is required

(9) [Write Your Own]

The following paragraph (LANDLORD'S WAIVER) is optional

SOP 50 10 -- Assignment of Lease and Landlord's Waiver

- r. Lender must obtain a written agreement from all Lessors (including sublessors) 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.

*The following paragraphs must appear in **504 Authorizations only** when collateral is Project Property.*

- s. CDC must obtain in recordable form written subordination agreements from any tenants occupying any of the Project real property required as collateral. Appropriate subordination language may be included in the Lease as an alternative.
- t. In addition at Closing in states where a survey is customarily provided for title insurance coverage, Borrower must also provide a survey certified to SBA/CDC, or a prior survey acceptable to SBA/CDC and the title insurer and a satisfactory survey affidavit of no change.
- u. At the time of Closing, either:
 - (1) there must be no contractor's, mechanic's or materialman's lien on the Property, including a lien which might possibly be filed after Closing, which would impair the stated priority of the CDC/SBA lien, and there must be no other circumstances adversely affecting the value of the property; or,
 - (2) no exception for these in the title insurance commitment/policy, or
 - (3) The title insurance company must provide affirmative coverage to CDC and SBA over any such exceptions, affording reasonably adequate protection against material loss arising from such exceptions. In addition, the title insurance company must provide such endorsements as CDC or SBA deems necessary to protect CDC and SBA reasonably against material loss arising from any other exceptions.

6. Leasehold Security Interest in building on leased land

[Option – Shared] [SELECT - First, Second, etc.] Leasehold Security Interest (including due on sale clause) in building on leased land located at [address of property].

The following must appear if junior lien position.

- a. Subject to lien(s) totaling not more than \$**[Amount]**].

The following must appear if junior lien position.

- b. Subject only to prior lien(s) as follows:
 - (1) First: **[name of lienholder] [SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount], with a revolving provision limited to a total principal outstanding of \$[amount]]**.
 - (2) Second: **[name of lienholder] [SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount], with a revolving provision limited to a total principal outstanding of \$[amount]]**.
 - (3) **[etc., up to four]**.

*The following must appear in **504 Authorizations only** if shared lien position.*

- c. The lien securing the 504 Loan is a shared lien pari passu with that of **[name of lender]** in the amount of \$**[amount]**. An intercreditor agreement, satisfactory to CDC and SBA, must be executed. The agreement (or a memorandum thereof) must be recorded.

The following must appear in 7a Authorizations only if shared lien position.

- d. The lien securing the Loan is a shared lien pari passu with **[SELECT – Lender's non-SBA loan - OR - [name of lender]]** in the amount of \$**[amount]**. Lender must follow the requirements in the pari-passu provision below.

The following paragraphs must always appear.

- e. Remaining term of lease, including options to renew exercisable solely by the Borrower, must cover term of Loan **[OPTION - plus [number of years] year(s)]**.
- f. Lease must contain clauses providing for the following:
- (1) Tenant's right to encumber leasehold estate;
 - (2) No modification or cancellation of lease without lender's or assignee's approval;
 - (3) Lender's or assignee's right to acquire the leasehold at foreclosure sale or by assignment and right to reassign the leasehold estate (along with right to exercise any options) by lender or successors; lessor may not unreasonably withhold, condition or delay the reassignment;
 - (4) Lender's or assignee's right to sublease;
 - (5) Lender's or assignee's rights upon default of the tenant or termination of the lease. This would include notice, extended time to cure (at least 60 days), time allotted for foreclosure and sale, and procedures for non-monetary defaults;
 - (6) Lender's or assignee's rights to hazard insurance proceeds resulting from damage to improvements;
 - (7) Lender's or assignee's right to share in condemnation proceeds.
- g. Lender must obtain Lessor's written consent and subordination to the fixture filing.

7. Lessee's Interest in a Lease by Assignment

Collateral Assignment of Lessee's Interest in the Lease between **[Lessor's name]**, Lessor, and **[Lessee's name]**, Lessee, **[OPTION - dated [date of lease]]** for the premises located at **[address of leased premises]**, including right of reassignment, Lessor's consent to the assignment and agreement to subordinate its interest in any property which is collateral for the Loan. Remaining term of lease, including options to renew exercisable solely by the Borrower, must cover term of Loan **[OPTION - plus [number of years] year(s)]**. Lease must require Lessor to provide Lender/SBA **[number of days - default is 60]**-day written notice of intent to terminate the lease for Borrower's default and an opportunity to cure.

8. Lessee's Interest in a Lease by Lien, Mortgage or Deed of Trust

[SELECT - First, Second, etc.] Lien, Mortgage or Deed of Trust on Lessee's interest (including due on sale clause) in the lease between [Lessor's name], Lessor, and [Lessee's Name], Lessee, [MUST APPEAR if not a first lien position - subject to lien(s) totaling not more than \$[Amount]]. This property is [SELECT - residential - OR - commercial]. The terms of the lease or the lien instrument must include a right of reassignment, Lessor's consent to the assignment and agreement to subordinate its interest in any property which is collateral for the Loan. Remaining term of lease, including options to renew exercisable solely by the Borrower, must cover term of Loan [OPTION - plus [number of years] year(s)]. Lease must require Lessor to provide Lender/SBA [number of days - default is 60]-day written notice of intent to terminate the lease for Borrower's default and an opportunity to cure.

9. Leasehold on Tribal Land

Assignment of Leasehold on Tribal Land. [SELECT - First, Second, etc.] Assignment, with right of reassignment, of all of Borrower's rights and interests in and to a certain Lease between Borrower (as Lessee) and [name of Indian tribe] Indian Tribe (as Lessor) covering premises located at [location of leasehold], [MUST APPEAR if not a first lien position - subject to lien(s) totaling not more than \$[Amount]] to include written consent of the Tribal Council and the Secretary of the Interior. Remaining term of lease, including options to renew exercisable solely by the Borrower, must cover term of Loan [OPTION - plus [number of years] year(s)].

10. Cooperative Apartment

[SELECT - First, Second, etc.] Security Interest in Cooperative Apartment located at [property address], including an Assignment of Proprietary Lease to Premises and pledge of shares of stock in Cooperative Apartment, subject to recognition of lien by Cooperative Association/Corporation. A Uniform Commercial Code lien search evidencing the required lien position is required.

C. Security Interests

1. Personal Property

This section should be used more than once if different lien positions are taken on different kinds of personal property.

For Puerto Rico Chattel Mortgage only: the text 'perfected security interest' will be replaced with 'chattel mortgage'.

The following [Option – Shared] must appear in 7a, 504 and EWCP Authorizations only if shared lien position.

[Option – Shared] [SELECT - First, Second, etc.] perfected security interest, [MUST APPEAR if first lien position - subject to no other liens] in the following personal property (including any proceeds and products), **[SELECT - whether now owned or later acquired - OR - acquired with loan or project proceeds, including all replacements and substitutions]**, wherever located:

[OPTION - Equipment;]

[OPTION - Fixtures;]

[OPTION - Inventory;]

[OPTION - Accounts;]

[OPTION - Instruments;]

[OPTION - Chattel Paper;]

[OPTION - General Intangibles;]

[OPTION - Farm Products - Crops growing or to be grown, their products, and all accounts or general intangibles arising from their sale ;]

[OPTION - Farm Products - All livestock now owned, in gestation and later acquired, including their products and natural increase, if any;]

[OPTION - Write Your Own]

The following must appear in 504 Authorizations only if shared lien position.

- a. The lien securing the 504 Loan is a shared lien pari passu with that of **[name of lender]** in the amount of **[\$[amount]]**. An intercreditor agreement, satisfactory to CDC and SBA, must be executed.

The following must appear in 7a Authorizations only if shared lien position.

- b. The lien securing the Loan is a shared lien pari passu with **[SELECT – Lender's non-SBA loan - OR - [name of lender]]** in the amount of **[\$[amount]]**. Lender must follow the requirements in the pari-passu provision below.

If junior lien position, select one or more of the following options (a, b, and c).

Note : Options a and c can be repeated if necessary

- c. Subject only to the prior lien of **[prior lienholder]** in the amount of **[\$[Amount]]** on the following collateral: **[SELECT from list of personal properties selected above]**

- d. Any prior lien that is open ended as to future advances must be closed, in writing, according to applicable state law.
- e. Subject only to the interest of **[lender's name]** under a Line of Credit in the maximum amount of **[\$[Amount]]** on the following collateral: **[SELECT from list of personal properties selected above]**

The following paragraph (LANDLORD'S WAIVER) is optional

- f. Lender must obtain a written agreement from all Lessors (including sublessors) agreeing to: (1) Subordinate to Lender 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.

The following paragraph must appear if equipment or fixtures is selected above

- g. 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.

The following paragraph must always appear

- h. Lender must obtain an appropriate Uniform Commercial Code lien search evidencing all required lien positions. If UCC search is not available, another type of lien search may be substituted.

The following paragraph must appear in 7(a) Authorizations only if junior lien position

- i. Lender must take a purchase money security interest in all personal property acquired with Loan proceeds.

The following paragraphs must appear in 504 Authorizations only when collateral is Project Property.

- j. At the time of Closing, there must be no circumstances adversely affecting the value of the property. There must be no lien on the Property, including a lien which might possibly be filed after Closing, which impairs the stated priority of the CDC/SBA lien.

2. Liquor License

[SELECT - First, Second, etc.] Security interest in [SELECT - Liquor License #[License number]] and the proceeds of any sale of the license - OR - proceeds of the sale of Liquor License #[License number]].

The following must appear if first lien position.

- a. subject to no other liens.

The following must appear if junior lien position.

- b. subject only to prior lien(s) as follows:
 - (1) First: **[name of lienholder]** in the amount of **[\$[amount]]**
 - (2) Second: **[name of lienholder]** in the amount of **[\$[amount]]**

(3) [etc., up to four]

3. Vehicle

[SELECT - First, Second, etc.] Security Interest on the following Vehicle - Make or Model: **[INPUT]**, Year: **[INPUT]**, Vin #: **[INPUT]**.

The following must appear if first lien position.

a. subject to no other liens.

The following must appear if junior lien position.

b. subject only to prior lien(s) as follows:

(1) First: **[name of lienholder]** in the amount of \$**[amount]**

(2) Second: **[name of lienholder]** in the amount of \$**[amount]**

(3) [etc., up to four]

4. Mobile Home

[SELECT - First, Second, etc.] Security Interest in a Mobile Home, Serial Number **[serial number]**, owned by **[record owner]** located at **[property address]**.

The following must appear if first lien position.

a. subject to no other liens.

The following must appear if junior lien position.

b. subject only to prior lien(s) as follows:

(1) First: **[name of lienholder]** in the amount of \$**[amount]**

(2) Second: **[name of lienholder]** in the amount of \$**[amount]**

(3) [etc., up to four]

5. Aircraft

[SELECT - First, Second, etc.] Perfected Security Agreement recorded with the Federal Aviation Administration (FAA) Oklahoma City, Oklahoma, against the following aircraft - Make: **[make]**, Model: **[model]**, Year: **[year]**.

The following must appear if first lien position.

a. subject to no other liens.

The following must appear if junior lien position.

b. subject only to prior lien(s) as follows:

(1) First: **[name of lienholder]** in the amount of \$**[amount]**

(2) Second: **[name of lienholder]** in the amount of \$**[amount]**

(3) [etc., up to four]

The following paragraph always appears

c. Lender must verify title and lien position by Certificate.

6. Vessel

[SELECT - First, Second, etc.] Preferred Ship's Mortgage recorded with the U.S. Coast Guard against the vessel named **[name of vessel]**, and noted on the vessels' official log.

The following must appear if first lien position.

a. subject to no other liens.

The following must appear if junior lien position.

b. subject only to prior lien(s) as follows:

(1) First: **[name of lienholder]** in the amount of **[\$[amount]]**

(2) Second: **[name of lienholder]** in the amount of **[\$[amount]]**

(3) [etc., up to four]

The following paragraph always appears

c. Lender must verify lien position by Certificate issued by U.S. Coast Guard.

*The following paragraphs must appear in 504 Authorizations only
when collateral is Project Property.*

d. At the time of Closing, there must be no circumstances adversely affecting the value of the property. There must be no lien on the Property, including a lien which might possibly be filed after Closing, which impairs the stated priority of the CDC/SBA lien.

D. Assignments of Interest

1. Certificate of Deposit

Assignment of certificate of deposit held by **[owner of CD]** in the amount of **[\$[Amount of CD]]**, with acknowledgment from the issuing financial institution.

2. Mutual Fund

Assignment of Mutual Fund Interest: Assignment to Lender by **[shareholder]** (shareholder) of all interest in **[name of Mutual Fund account]**. Lender must obtain acknowledgment of such assignment from the broker or Mutual Fund.

3. Corporate Stock (by pledge)

Pledge of Corporate Stock: Pledge to Lender by **[shareholder]** (shareholder) of **[number of shares]** shares of stock (but not voting rights) in **[name of company]**.

4. Note

Assignment of note dated **[date of note]**, executed by **[Input]** to **[Input]** with approximate balance due of **[\$[Amount of balance due] [OPTION - and assignment of: [Reverts to full list of collateral conditions to select]]**

5. Contract

Contract Assignment: A valid assignment and first security interest covering all proceeds under contract dated **[date of contract]** between Borrower and **[name of other party to contract]** in the amount of **[\$[Amount]]**.

6. Government Contract

U.S. Government Contract Assignment and Notice of Assignment: Assignment of monies due or to become due under federal contract number **[contract number]** with the **[name of agency]** in the amount **[\$[Amount of contract]** and any subsequent modifications or additions. Lender must perfect the assignment pursuant to Federal Acquisition Regulations.

7. U.S. Patent

Assignment of U.S. patent number **[patent number]** issued to **[patent holder]**. Lender must comply with U.S. Patent and Trademark laws.

Appendix B

State-specific Options in the Standard Collateral Conditions

This appendix describes the title options and other requirements for real property collateral liens in SBA authorizations, for every U.S. state and territory.

For each state, this appendix lists below the types of lien instruments available, the available evidence of title options and additional provisions required by the SBA for real property liens, called Boilerplate Provisions. Unless indicated otherwise, the Boilerplate Provisions for each state are mandatory.

Please note special requirements for 504 projects: the ALTA Title Policy is required where it is available. The exceptions are Alabama, Indiana, Iowa and Texas.

Evidence of Title Key. *Refer to Appendix A for the full text.*

- (1) ALTA Loan Policy insuring lender and assigns
- (2) Mortgagee's Title Policy insuring lender and assigns
- (3) Attorney's Certificate of title, or title opinion in favor of lender (...)
- (4) Title Insurance customarily obtained for similar transactions in this state
- (5) Title and/or Lien Search, or other evidence of proper ownership (...)
- (6) CLTA Loan Policy
- (7) Limited Title Policy
- (8) Property, Judgment and Lien Report indicating lender obtained required position

Boilerplate Provision Requirements Key. *Refer to Appendix A for the exact text.*

- (1) (index not used)
- (2) Prior open ended lien(s) closed in writing according to applicable state law. Revolving line(s) of credit limited in writing to the amount stated.
- (3) Written agreement from prior lienholders to provide Lender with [Number of days] days written notice before commencing foreclosure of prior lien.
- (4) Request for Notice filed pursuant to state law. For 504 Loans, notice required to CDC and SBA CSLC.
- (5) Written waiver of homestead. (Residential property only).
- (6) Prior lienholder written verification (a) of amount owing on prior obligation, (b) that prior obligation is current on payments, and (c) that prior obligation is not otherwise in default.
- (7) Written waiver of redemption rights. (Non-residential property only).
- (8) Reserved.
- (9) Written waiver of Business Homestead required if real property collateral is owned by an individual or an individual and spouse.
- (10) Statement of non-homestead. (Residential property only.)
- (11) Statutory Condition and the Statutory Power of Sale language required.

Real Property Provisions by state

Alabama

Instrument: Mortgage

Evidence of Title:

Commercial Collateral: (1)

Non-commercial: (3) (4) (5)

Boilerplate: (6) (10)

Optional: (2)(3)(5)

Alaska

Instrument: Deed of Trust

Evidence of Title: (1) (2) (5)

Boilerplate: (2) (5) (6)(10)

Arizona

Instrument: Deed of Trust

Evidence of Title: (1) (2) (5)

Boilerplate: (2) (6)

Arkansas

Instrument: Mortgage, Deed of Trust

Evidence of Title:

Commercial Collateral: (1)

Non-commercial: (2)(5)

Boilerplate: (2) (4) (5)(10)

California

Instrument: Deed of Trust

Evidence of Title: (1) (6) (7) (4) (5)

Boilerplate: (2) (4) (6)

Colorado

Instrument: Deed of Trust

Evidence of Title: (1) (5)

Boilerplate: (2) (6) (10)

Connecticut

Instrument: Mortgage

Evidence of Title: (1) (2) (3) (5)

Boilerplate: (2) (5) (6)

Delaware

Instrument: Mortgage

Evidence of Title: (1) (4) (5)

Boilerplate: (2) (6)

Florida

Instrument: Mortgage

Evidence of Title:

Commercial Collateral: (1)

Non-commercial: (5)

Boilerplate: (2) (10-required on non-homestead residential property only)

Optional: (6)

Georgia

Instrument: Deed to Secure Debt

Evidence of Title:

Commercial Collateral: (1)

Non-commercial: (3) (4) (5)

Boilerplate: (2) (6)

Optional: (3)

Guam

Instrument: Mortgage

Evidence of Title: (1) (4) (5)

Boilerplate: (2) (6) (10)

Hawaii

Instrument: Mortgage

Evidence of Title: (1) (4) (5)

Boilerplate: (2) (6)

Idaho

Instrument: Deed of Trust, Mortgage

Evidence of Title: (1) (2)

Boilerplate: (2) (6)

Illinois

Instrument: Mortgage

Evidence of Title: (1) (3) (5)

Boilerplate: (2) (5) (6) (7)

Indiana

Instrument: Mortgage

Evidence of Title: (2) (5)

Boilerplate: (2) (6)

Iowa

Instrument: Mortgage
Evidence of Title: (3) (5)
Boilerplate: (2) (5) (6)

Kansas

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (4) (5)
Boilerplate: (2) (6) (7) (10)

Kentucky

Instrument: Mortgage
Evidence of Title:
Commercial Collateral: (1)
Non-commercial: (2) (5)
Boilerplate: (2)
Optional: (3)(5)(6)(10)

Louisiana

Instrument: Mortgage
Evidence of Title:
Commercial Collateral: (1)
Non-commercial: (2) (5)
Boilerplate: (2) (4) (5) (10)
Optional: (3)(6)

Maine

Instrument: Mortgage
Evidence of Title: (1) (5)
Boilerplate: (2) (6)

Maryland

Instrument: Deed of Trust; Indemnity Deed of Trust (when securing guarantee)
Evidence of Title: (1) (2) (3) (8) (5)
Boilerplate: (2) (3)

Massachusetts

Instrument: Mortgage
Evidence of Title: (1) (2)
Boilerplate: (2) (4) (6) (11)

Michigan

Instrument: Mortgage
Evidence of Title: (1) (5)
Boilerplate: (2) (3)

Minnesota

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (4) (5)
Boilerplate: (2) (4) (6) (10)

Mississippi

Instrument: Deed of Trust
Evidence of Title:
Commercial Collateral: (1)
Non-commercial: (3) (4) (5)
Boilerplate: (2) (5) (6) (10)
Optional: (3)

Missouri

Instrument: Deed of Trust
Evidence of Title: (1) (2) (3) (4) (5)
Boilerplate: (2) (4) (6)

Montana

Instrument: Montana Trust Indenture, Mortgage
Evidence of Title: (1) (2) (5)
Boilerplate: (2) (3) (6)

Nebraska

Instrument: Deed of Trust
Evidence of Title: (1) (2) (3)
Boilerplate: (2) (4) (6) (10)

Nevada

Instrument: Deed of Trust
Evidence of Title: (1) (2) (3)
Boilerplate: (2) (4) (5) (6) (10)

New Hampshire

Instrument: Mortgage
Evidence of Title: (1) (3)
Boilerplate: (2) (3) (5) (6) (10)

New Jersey

Instrument: Mortgage
Evidence of Title: (1) (2)
Boilerplate: (6) (10)

New Mexico

Instrument: Mortgage
Evidence of Title: (1) (2)
Boilerplate: (2) (3) (6)

New York

Instrument: Mortgage
Evidence of Title: (1) (2)
Boilerplate: (2) (6)

North Carolina

Instrument: Deed of Trust
Evidence of Title:
 Commercial Collateral: (1)
 Non-commercial: (1) (2) (3) (4)
Boilerplate: (2) (4) (6)

North Dakota

Instrument: Mortgage
Evidence of Title: (1) (2)
Boilerplate: (2) (5) (6) (10)

Ohio

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (5)
Boilerplate: (2) (6)

Oklahoma

Instrument: Mortgage
Evidence of Title:
 Commercial Collateral: (1)
 Non-commercial: (2) (3) (4) (5)
Boilerplate: (2) (6) (10)

Oregon

Instrument: Deed of Trust, Mortgage
Evidence of Title: (1) (4) (5)
Boilerplate: (2) (6)

Pennsylvania

Instrument: Mortgage
Evidence of Title: (1) (4) (5)
Boilerplate: (2) (6)

Puerto Rico

Instrument: Mortgage
Evidence of Title: (1) (2) (5)
Boilerplate: (2) (6)

Rhode Island

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (4) (5)
Boilerplate: (2) (10) (11)

South Carolina

Instrument: Mortgage
Evidence of Title:
 Commercial Collateral: (1)
 Non-commercial: (2) (3) (5)
Boilerplate: (2) (5)
Optional: (3)

South Dakota

Instrument: Mortgage
Evidence of Title: (1) (2) (5)
Boilerplate: (2) (5) (6) (10)

Tennessee

Instrument: Deed of Trust
Evidence of Title:
 Commercial Collateral: (1)
 Non-commercial: (3)
Boilerplate: (2)
Optional: (3)(6)(8)

Texas

Instrument: Deed of Trust
Evidence of Title:
 Commercial Collateral: (2)
 Non-commercial: (5)
Boilerplate: (2) (5) (6) (9)
Optional: (3)

Utah

Instrument: Deed of Trust
Evidence of Title: (1) (Policy must be
“extended coverage” policy and include
Endorsement 100 (or 9-06) and 116 (or
22-06))

Vermont

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (5)
Boilerplate: (2) (3) (5) (6) (10)

Virginia

Instrument: Deed of Trust
Evidence of Title: (1) (3) (5)
Boilerplate: (2) (6a) (6b)

Washington

Instrument: Deed of Trust, Mortgage
Evidence of Title: (1) (2)
Boilerplate: (2) (6)

Washington DC

Instrument: Deed of Trust
Evidence of Title: (1) (4) (5)
Boilerplate: (2) (6) (10)

West Virginia

Instrument: Deed of Trust, Mortgage
Evidence of Title: (1) (3) (5)
Boilerplate: (2) (3) (4) (6)

Wisconsin

Instrument: Mortgage

Evidence of Title: (1) (5)

Boilerplate: (2) (3) (6) (10)

Wyoming

Instrument: Mortgage

Evidence of Title: (1) (2) (4) (5)

Boilerplate: (5) (6) (10)

Appendix C

Frequently-Asked Questions (FAQ's)—7a

This appendix is a compilation of frequently asked questions (FAQ's) relating to the Boilerplate.

What should you do if you don't find the answer to your question in this FAQ?

Submit comments and suggestions to 7aquestions@sba.gov.

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1. Why was the Authorization changed so that it is no longer a Loan Agreement?

Under SBA regulations, the Authorization is not an agreement to lend money (see 13 CFR 120.10). The Authorization is intended to provide the lender with specific conditions which must be met for SBA to provide a guaranty of the loan the lender is making to the borrower. It is not a contract between SBA and the borrower, and the borrower is not a third party beneficiary of the Authorization. SBA is not lending money to the borrower and SBA cannot force a lender to make a loan to any borrower, even if the borrower complies with the terms of the Authorization. The borrower and operating company do not sign the Authorization. The change in focus reflects these SBA policies.

The requirements of the Authorization are directed to the lender. SBA is not directing borrowers to meet certain requirements. SBA directs lenders to obtain the information, documents, and certifications from the borrowers necessary to meet SBA's requirements for a guaranty. When a lender requests that SBA honor its guaranty, SBA requires the lender to present evidence that the loan was properly closed in accordance with the Authorization and serviced and liquidated according to SBA policies. Lenders are responsible for meeting SBA requirements and the focus of the Authorization emphasizes this SBA policy.

2. Does SBA require a loan agreement? What sample form can lenders use for borrower's certifications?

SBA does not require that a lender use a loan agreement. It is up to a lender to determine whether a loan agreement is needed for its lending practice. Paragraph C. of the Boilerplate states that it is a lender's sole responsibility to close the loan in accordance with the terms and conditions of the authorization, to obtain valid and enforceable loan documents, and to retain the documents. SBA does not require a loan agreement but does require that the documents be enforceable and that the borrower makes certain certifications. Lenders are provided with a sample form, Borrower's Certification (4 pages - see Appendix D), which is a compilation of the various certifications found in the Boilerplate and provides a space for the borrower to initial next to those certifications applicable to the particular loan. Lenders will need to retain an executed document containing these certifications, and may use this sample form as a basis for that document or for incorporating the required certifications into their loan agreement. SBA is leaving the issue of whether a loan agreement is required, and what form it should take, up to the lender, but SBA does require that necessary borrower's certifications be made in writing.

3. What if Authorization provisions conflict with SOP 50-10?

SBA establishes the wording for all 7(a) delegated and non-delegated Authorization conditions in the National Authorization Boilerplate ("the Boilerplate"). The conditions reflect the policies and procedures in effect at the time the Boilerplate is issued. If there is any conflict between the Boilerplate and the SOP, the SOP supersedes. If you discover an apparent conflict, please send an e-mail to 7aquestions@sba.gov mailbox describing the conflict and stating the SOP paragraph and the authorization paragraph which you believe conflict. The Boilerplate will be updated from time to time to reflect policy changes in subsequent regulations, Notices, or SOPs.

4. How will subsequent modifications to the Authorization be distributed to the field?

The Authorization will be modified periodically to address state-specific issues, implement policy changes, and correct "glitches".

Lenders should check the SBA web site or with their local SBA office periodically to insure they have the latest version of the Authorization. Once SBA releases a new version, there will be a 30-day grace period to begin using the new version. If you are using the Wizard, the version is printed in the footer of each authorization document, or the version can be seen by selecting the 'About 7a Wizard' option in the 7a Wizard menu. It is also printed on the first page of the Boilerplate.

5. Can you include additional forms in section "D. Required Forms"?

The Boilerplate lists all SBA required forms. (The 7a Wizard automatically adds SBA Forms 148 and 601 when applicable.)

The SBA Deed of Trust and Mortgage are no longer required forms. Lenders may use their own lien instruments, which must comply with legal requirements and prudent lending practices. If they do, they must add to all lien instruments the federal law and arbitration provisions required in the Collateral section of the Authorization. This language must also be added to the SBA Deed of Trust and Mortgage forms if the lender chooses to use these forms. The federal law provisions stating that the lien instrument is to be construed in accordance with federal law if SBA is enforcing the Note protects SBA if the lender assigns its loan documents to SBA for enforcement. The arbitration clause is necessary to protect SBA from binding arbitration clauses found in some local forms.

The SBA Standby Creditor's Agreement also is no longer a required form. Lenders may use the revised Form 155 or a substantially equivalent form. The revised Form 155 is available on [SBA's Intranet](#), and on the SBA internet banking site at www.sba.gov/tools/forms/sbapartnerforms/lenderforms/.

Lenders have the option of using their own Note and guaranty agreements or the SBA versions (SBA Forms 147, 148 and 148L). Lender must comply with the requirements in the current SOP 50 10.

SBA offices may not require lenders to use any local forms.

6. Why doesn't SBA instruct lenders how to obtain insurance, perfect liens or meet other requirements in the Authorization?

The Authorization gives a lender the requirements that must be met for SBA to guarantee a loan. It does not instruct the lender how specifically to meet those requirements. As lenders, they are responsible for knowing how to properly close loans, secure collateral, and obtain and perfect the required lien position. A lender and SBA sign a Loan Guaranty Agreement, SBA Form 750, that provides the general requirements the lender must meet for SBA to guarantee loans at lender's request. SBA lenders must follow SBA's regulations and SOP requirements. They are held to a prudent lender standard.

7. Why doesn't the Authorization specify how to perfect a lien for each piece of real estate taken as collateral or specify which signatures a lender must obtain for rental property?

The Boilerplate notifies lenders that they must obtain "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." SBA holds lenders responsible for knowing how to create and properly perfect a lien on property required by the Authorization. The Authorization gives a lender the requirements that must be met for SBA to guarantee the loan between the lender and the borrower. It does not instruct the lender on how to meet those requirements. The lender, not SBA, must determine the legal ownership of a piece of real estate and determine what signatures must be obtained to create enforceable documents.

8. Why are machinery, furniture and business assets not collateral categories in the lien provisions?

The Boilerplate provisions for personal property collateral use the defined terms in the Uniform Commercial Code (Code) for property categories. The Code states which types of property fall into each category. Machinery, furniture and business assets are included in one or more of the defined collateral categories. For example, machinery and furniture are defined as equipment under the Code. If you cannot determine the appropriate option(s), consult with counsel.

9. May I write my own repayment terms, or use local lender terms and skip the standard repayment terms?

Lenders have the option of using their own Note or SBA Form 147. If Lender uses SBA Form 147, Lender must use the repayment terms in the authorization. Lenders using their own Note are required to comply with SBA repayment terms but are not required to use the specific language set forth in the authorization.

10. Why doesn't the Authorization require lenders to use the low prime published in the Wall Street Journal?

The Wall Street Journal now only publishes one prime rate. This rate is based on the corporate loan rate charged by 75% of the nation's 30 largest banks.

11. Can I remove the extraneous documents in the "Borrower, Guarantor and Operating Company Documents" section?

No. The Authorization intentionally lists documents required for all types of legal entities. Borrowers, Guarantors and Operating Companies frequently change their legal structures between the time the authorization is issued and the loan is closed. The list tells a lender what is required for each entity and accommodates changes in organization that are made before closing. Lenders should inform SBA of any changes and should submit material changes for SBA review and approval.

12. Why does the Authorization have the SBA Logo instead of the SBA Seal?

SBA Headquarters selected the Logo instead of the Seal.

13. How is the SBA Loan Name determined?

Choose the first available name from this list:

- a. dba of the Operating Company
- b. name of the Operating Company
- c. dba of the Borrower
- d. name of the Borrower

In the case of multiple borrowers or operating companies, apply the same rule, using the first operating company or borrower listed by the Loan Officer.

14. What is SBA's Environmental Policy?

SBA's Environmental Policy is in SOP 50-10(5), Subpart "B", Chapter 4. Lenders must be familiar with this policy. Basic environmental conditions are set forth in the Boilerplate. Lenders should consult with the local SBA office where the real property is located to ascertain any state or local requirements to be added to the authorization. Except for PLP, 7(a) Small Loans, SBA Express, and Export Express loans, a lender must submit the results of the Environmental Investigation to the SBA. If it is not submitted to the processing office at the time of application, then it must be submitted to the SBA office identified in the authorization prior to disbursement. Except for PLP, 7(a) Small Loans, SBA Express, and Export Express loans, a lender must not disburse a loan until SBA has reviewed the results of the investigation and is satisfied that the risk of potential environmental contamination has been sufficiently minimized. Lenders processing PLP, 7(a) Small Loans, SBA Express, and Export Express loans must comply with the environmental provisions of the SOP in conducting the environmental investigation and reaching a conclusion that the risk of contamination is sufficiently minimized.

15. Why does the Authorization place restrictions on any lender's non-SBA financing when that lender takes a shared lien on joint ("Pari Passu") financing?

The Authorization provides that when any lender, including the participant lender (the "Pari Passu Lender"), makes a related non-SBA ("Pari Passu") loan taking a shared lien position on collateral also financed with and securing an SBA loan, any charges and advances made by that Pari Passu Lender in connection with the shared lien are prohibited, other than advances made in connection with reasonable costs of collection, maintenance and protection of Pari Passu Lender's shared lien. The Authorization also prohibits the Pari Passu Lender from making a demand on the Pari Passu Loan for reasons other than default. The purpose of this provision is to insulate the SBA loan from any shared lien default charges or open ended features which may adversely affect repayment of the SBA loan. If the Pari Passu Lender is not the participant lender, then prior to disbursement the participant Lender must obtain an Inter-Creditor Agreement from the Pari Passu Lender containing these provisions.

16. How does a lender or SBA loan officer add loan specific provisions to the Authorization?

There is an OPEN OPTION for the processing officer or lender to add loan specific requirements. It is expected that lender and SBA staff, including SBA counsel, will communicate closely in drafting these requirements.

Any special conditions created for use in the authorization can only be used one time before obtaining SBA approval of the language. This includes conditions created by PLP Lenders or SBA offices. To obtain approval to use a special condition in more than one authorization, contact 7(a) Policy Branch, Office of Financial Assistance.

Appendix D

Loan Agreement and Borrower and Operating Company Certification Sample Documents

This appendix contains sample documents provided to lenders under the conditions described below:

SBA does not require that a lender use a loan agreement. It is up to a lender to determine whether a loan agreement is needed for its lending practice. Paragraph C of the Boilerplate states that it is a lender's sole responsibility to close the loan in accordance with the terms and conditions of the authorization, to obtain valid and enforceable loan documents, and to retain the documents.

SBA does not require a loan agreement but does require that the documents be enforceable and that the borrower makes certain certifications.

Lenders are provided with a sample form, **Borrower and Operating Company Certification** (4 pages), which is a compilation of the various certifications found in the Boilerplate and provides a space for the borrower to initial next to those certifications applicable to the particular loan. Lenders will need to retain an executed document containing these certifications, and may use this sample form as a basis for that document or for incorporating the required certifications into their loan agreement. Any defined terms used in the sample Borrower and Operating Company Certification have the meanings given to them in SOP 50 10.

For 7a Wizard users:

A MS-Word version of the documents presented in this appendix is provided with the 7a Wizard. The MS-Word document is called **D7a2018.docx**. This document is not a wizard and is not connected to the 7a Wizard. It is a standard MS-Word document that can be edited in the same manner as any standard MS- Word document.

If the 7a Wizard was installed locally on your workstation, this document should be available in your MS-Word document directory that you can access via the **Open** command from the **File** menu.

If you are accessing the 7a Wizard via a local area network, contact your network administrator to know where the above document is located.

BORROWER AND OPERATING COMPANY CERTIFICATION

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** - Borrower and Operating Company have received a copy of the Authorization for this Loan from Lender, and acknowledge that:
- The Authorization is not a commitment by Lender to make a loan to Borrower;
 - The Authorization is between Lender and SBA and creates no third party rights or benefits to Borrower;
 - The Note will require Borrower to give Lender prior notice of intent to prepay.
 - 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.
 - 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.
 - If the small business defaults on the SBA-guaranteed loan and SBA suffers a loss, the names of the small business and the guarantors of the SBA-guaranteed loan will be referred for listing in the Credit Alert Verification Reporting System (CAIVRS) database, which may affect their eligibility for further financial assistance.
- [] 2. **Adverse Change** - That there has been no adverse change in Borrower's (and Operating Company's) financial condition, organization, operations or fixed assets since the date the Loan application was signed.
- [] 3. **Child Support** - 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** - 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** — For any real estate pledged as collateral for the Loan or where the Borrower or Operating Company (if applicable) is conducting business operations (collectively "the Property"):
- 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 and SBA 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 and 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 and 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-** Reimburse Lender for expenses incurred in the making and administration of the Loan.

[_____] 2. **Books, Records, and Reports-**

- 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** - 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** - To the extent practicable, purchase only American-made equipment and products with the proceeds of the Loan.

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

[_____] 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.

[] 10. **Leasing** - During the life of the loan, the real estate pledged as Collateral for the Loan or where the Borrower or Operating Company conducts its business operations will not be leased to or occupied by any business that Borrower or Operating Company knows is engaged in any activity that is illegal under federal, state or local law or any activity that can reasonably be determined to support or facilitate any activity that is illegal under federal, state, or local law.

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

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

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

[] 3. **Transfer of Assets** - 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** - Acquire by purchase or lease agreement any fixed assets (totaling more than \$_____in any year).

[] 5. **Location Limitation** - Acquire by purchase or by lease, any additional locations.

[] 6. **Limitation on Compensation** - 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. _____

Borrower and Operating Company, if any, warrants and represents that all information provided to Lender, including without limitation, all information regarding the Borrower's and Operating Company's, if any, financial condition, is accurate to the best of its knowledge and that Borrower and Operating Company, if any, has not withheld any material information. Borrower and Operating Company, if any, acknowledges that for the purpose of this transaction, Lender is acting on behalf of SBA, an agency of the United States Government, except that SBA accepts no liability or responsibility for any wrongful act or omission by Lender. Borrower and Operating Company, if any, further acknowledges that any false statements to Lender can be considered a false statement to the federal government under 18 U.S.C. § 1001, and may subject the Borrower and Operating Company, if any, to criminal penalties and that Lender and SBA are relying upon the information submitted by the Borrower and Operating Company, if any.

(Borrower) Date

(Operating Company) Date

By: _____

By: _____