



U.S. Small Business Administration
**BORROWER AND OPERATING
 COMPANY CERTIFICATION**

SBA Loan #	
SBA Loan Name	
Borrower	
Operating Company	
CDC	
Date of Certification (No more than 60 days prior to proposed Debenture funding)	
Loan/Debenture Amount	

INSTRUCTIONS: Check all of the following paragraphs that are applicable. Those that are pre-checked are mandatory certifications; others are required only if required by the Authorization. Instructions regarding particular certifications appear in brackets and italics.

To induce the Certified Development Company (CDC) to make the above-referenced U.S. Small Business Administration (SBA) 504 Loan to Borrower (and Operating Company, if loan is to an Eligible Passive Company) for purposes of financing the Project described in the Authorization for Debenture Guarantee (Authorization), Borrower and Operating Company each hereby certifies to CDC and SBA the following:

- XX** 1. **No Adverse Change**—Since the date of their application for this 504 Loan, there has been no unremedied substantial adverse change in the financial condition of Borrower and Operating Company or their ability to repay the Project financing, including the Note. Borrower and Operating Company each have supplied to CDC the following type of accurate financial statements, current within 120 days of 504 Loan closing [*select the one identified in the Authorization*]:
- (a) financial statements
 - (b) compiled financial statements
 - (c) reviewed financial statements
 - (d) audited financial statements

- ___ (e) financial statements compiled by a CPA
- ___ (f) financial statements audited by a CPA

XX 2. **Child Support**—No principal who owns at least 50% of the ownership or voting interest of the Borrower or Operating 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.

XX 3. **Current Taxes**—Borrower and Operating Company are current on all federal, state, and local taxes, including but not limited to income taxes, payroll taxes, real estate taxes, and sales taxes.

XX 4. **Environmental**—For any real estate pledged as collateral for the 504 Loan or where the Borrower or Operating Company is conducting business operations (collectively, for purposes of this paragraph 4, the Property):

- (a) At the time Borrower and Operating Company submitted the 504 Loan application, Borrower and Operating Company were 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 the Loan, Borrower and Operating Company will promptly notify CDC 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 is subject to any investigation or enforcement action by any federal, state or local environmental agency (Agency) pertaining to any Contaminant on, at, or under such Property, including groundwater.
- (e) As to any Property owned by Borrower or Operating Company, Borrower or Operating Company indemnifies, and agrees to defend and hold harmless, CDC 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.

XX 5. **Reimbursable Expenses**—Borrower and Operating Company will reimburse CDC for expenses incurred in the making and administration of the 504 Loan.

XX 6. **Books, Records, and Reports**—Borrower and Operating Company will:

- (a) Keep proper books of account in a manner satisfactory to CDC;
- (b) Furnish the following type [*select the one identified in the Authorization*] of year-end financial statements to CDC within _____ [*120 days, unless specifically stated otherwise*] days of year end:
 - ___ (i) financial statements
 - ___ (ii) compiled financial statements
 - ___ (iii) reviewed financial statements
 - ___ (iv) audited financial statements
- (c) Furnish additional financial statements or reports whenever CDC requests them; and
- (d) Allow CDC 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;
 - (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 CDC or SBA.

XX 7. **Equal Opportunity**—Borrower and Operating Company will post SBA Form 722, Equal Opportunity Poster, where it is clearly visible to employees, applicants for employment, and the general public.

XX 8. **American-made Products**—Borrower and Operating Company will, to the extent practicable, purchase only American-made equipment and products with the proceeds of the 504 Loan.

XX 9. **Taxes**—Borrower and Operating Company will pay all federal, state, and local taxes, including income, payroll, real estate and sales taxes of the business, when they come due.

XX 10. **Occupancy**—Borrower and Operating Company will [*select the one identified in the Authorization*] —

- ___ (a) Occupy, at all times during the term of the 504 loan, at least 51% of the total Rentable Property and 100% of the renovated Rentable Property. Borrower will not use Loan proceeds to improve or renovate any of the property leased to third parties; **OR**
- ___ (b) Comply with the following provisions: (1) Borrower must lease 100% of the Rentable Property to Operating Company; (2) Operating Company may sublease up to 49% of the total Rentable Property; (3) Borrower will not use the 504 Loan proceeds to improve or renovate any of the Rentable Property in the Project to be subleased; **OR**
- ___ (c) Comply with the following provisions: (1) Immediately occupy at least 60% of the total Rentable Property; (2) Continue to occupy at least 60% of the Rentable Property for the term of the Loan; (3) Lease long term no more than 20% of the total Rentable Property to one or more tenants; (4) Plan to occupy within three years some of the remaining Rentable Property not immediately occupied or leased long term; (5) Plan to occupy within ten years all of the Rentable Property not leased long term; **OR**

____ (d) Comply with the following provisions: (1) Borrower must lease 100% of the Rentable Property to Operating Company; (2) Operating Company must immediately occupy at least 60% of the Rentable Property; (3) Operating Company will lease long term no more than 20% of the Rentable Property to one or more tenants; (4) Operating Company must plan to occupy within three years some of the remaining Rentable Property not immediately occupied or leased long term; (5) Operating Company must plan to occupy within ten years all of the Rentable Property not leased long term.

____ (e) Other: Please attach a copy of SBA's written consent to an extension of time to comply with the alternative marked above.

XX 11. **Distributions**—Borrower and Operating Company will not, without the prior written consent of CDC and SBA, make any distribution of the assets of Borrower and/or Operating Company that will adversely affect the financial condition of Borrower and/or Operating Company.

XX 12. **Ownership Changes**—Borrower and Operating Company will not, without the prior written consent of CDC and SBA, change the ownership structure of or interests in the Borrower and Operating Company during the term of the Note, provided that, commencing six months after the Debenture sale, Borrower or Operating Company may have one or more changes in ownership without approval of SBA so long as the cumulative change over the term of the Note is less than five percent (5%).

XX 13. **Transfer of Assets**—Borrower and Operating Company will not, without the prior written consent of CDC and SBA, 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 or Operating Company's property or assets, except in the ordinary course of business.

XX 14. **Conflict**—Borrower and Operating Company will not, nor will any affiliates, without the prior written consent of CDC and SBA, acquire, directly or indirectly, in excess of a 10% ownership or interest in CDC during the term of the Debenture.

_____ 15. **Fixed Asset Limitation**—Borrower and Operating Company will not, without the prior written consent of CDC and SBA, acquire by purchase or lease agreement any fixed assets in excess of the amount stated in the Authorization, in any one year.

_____ 16. **Location Limitation**—Borrower and Operating Company will not, without the prior written consent of CDC and SBA, acquire by purchase or by lease any additional business locations.

_____ 17. **Limitation on Compensation**—Borrower and Operating Company will not, without the prior written consent of CDC and SBA, 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 the amounts stated in the Authorization.

XX 18. **Bankruptcy, Insolvency and Pending Lawsuits**—Any bankruptcy or insolvency proceedings involving, or pending lawsuit against, Borrower, Operating Company or any of their principals has been disclosed in writing to CDC.

XX 19. **Project Costs**—All elements of Project Costs have been paid in full and Borrower has contributed to the Project the cash, land or other property required by the Authorization.

_____ 20. **OTHER ADDITIONAL CERTIFICATIONS THAT THE CDC MAY REQUIRE:**

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Borrower and Operating Company, if any, warrants and represents that all information provided to CDC, 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, CDC 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 CDC. Borrower and Operating Company, if any, further acknowledges that any false statements to CDC 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 CDC and SBA are relying upon the information submitted by the Borrower and Operating Company, if any.

BORROWER:

OPERATING COMPANY:

By: _____

By: _____