

## MONTANA BOARD OF INVESTMENTS LOAN SERVICING AGREEMENT

**THIS AGREEMENT** is made and entered into as of \_\_\_\_\_  
20\_\_\_\_, by and between \_\_\_\_\_  
(the Lender) and the Board of Investments (the Board).

### WITNESSETH

**WHEREAS**, the Board is an agency of the State of Montana; and

**WHEREAS**, the Board in fulfilling its responsibility to administer the Coal Tax Trust Fund, Teacher's Retirement System Fund, and the Public Employees' Retirement System Fund, has adopted a Policy to implement a Loan Participation Program, through which program the Board will participate with approved financial institutions to make financing available to Montana businesses; and

**WHEREAS**, the Lender is an approved financial institution for purposes of the Board's programs; and

**WHEREAS**, the Lender is a \_\_\_\_\_ duly organized and existing under the laws of \_\_\_\_\_; and with its principal office at \_\_\_\_\_; and

**WHEREAS**, the Lender has offered the Board an opportunity to participate in certain loans secured by liens on real property and/or security interests in tangible personal property and the Board has evidenced an interest in acquiring a participating interest in such loans and the collateral security for said loans; and

**WHEREAS**, the Lender and the Board agree that if the Board decides to participate in a Loan offered by the Lender such participation shall be upon the terms and conditions set forth herein; and

**WHEREAS**, the Lender and the Board are both authorized to enter into this Agreement for the purpose of defining each party's rights and obligations under the Loan Participation Program;

**NOW THEREFORE**, in consideration of the foregoing, the mutual covenants and conditions contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree and covenant as follows:

**Section 1.01. Definitions.** The following words and terms have the following respective meanings:

(1) "Act" means the "Montana In-State Investment Act of 1983", Montana Code Annotated, Title 17, Chapter 6, Part 3 and all amendments thereto.

(2) "Borrower" means the person or entity to whom a Participation Loan is made by the Lender.

(3) "Collateral" means the property, which is or at any time becomes subject to a Security Agreement.

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(4) "Commercial Loan Policy" means that written document, approved by the Board, identifying the guidelines which the Board will consider issuing a Commitment Letter.

(5) "Commitment Letter" means that written document, originated by the Board specifying the terms and conditions under which the Board will participate in a specific loan with the lender.

(6) "Forward Commitment" means that written document, issued by the Board to the lender, reserving a specific interest rate and dollar amount for a specific time with the Board.

(7) "Loan Agreement" means the loan agreement between the Borrower and the Lender setting forth the terms and conditions applicable to a Participation Loan.

(8) "Loan Documents" mean the Security Agreement, the Loan Agreement, the Note, UCC Financing Statements, ALTA Extended Mortgagee Title Insurance and other documents and instruments evidencing, securing, guaranteeing or otherwise pertaining to a Participation Loan.

(9) "Note" means the promissory note executed by a Borrower evidencing a Participation Loan, naming the Lender as payee and setting forth the terms of the obligation, in a form acceptable to the Board.

(10) "Participation Certificate" means the certificate, substantially in the form of Exhibit A hereto, executed by the Lender and accepted in writing by the Board setting forth the amount of a Participation Loan, the Lender's and the Board's respective shares thereof, the respective interest rates applicable thereto and the Lender's service fee.

(11) "Participation Loan" means any loan in which a Participation Certificate has been issued by the Lender and accepted in writing by the Board.

(12) "Participation", "Participation Percentage", "Participation Interest" or words of like import mean the Board's undivided interest in and ownership of a percentage of a Participation Loan as evidenced by the Participation Certificate issued by the Lender with respect to such Participation Loan.

(13) "Project" means the land, building, equipment, fixtures, furnishings and personal property or any one or more of the foregoing financed by a Participation Loan.

(14) "Security Agreement" means an agreement granting a lien or security interest in real or personal property as security for a Participation Loan whether in the form of a mortgage, deed of trust, trust indenture, security agreement or other instrument.

(15) "Tangible Personal Property" means all equipment, machinery and personal property that are a part of a Project.

(16) "Value-Added Loan" means any loan to a "value-added" business as defined in the Commercial Loan Policy that meets the criteria pursuant to 17-6-317.

**Section 1.02. Exhibits.** Attached to and by reference made a part of this Agreement are: Exhibit A, the form of the Participation Certificate, Exhibit B, the form of the Participation Report, and Exhibit C, the Confirmation of Loan Activity covered under SBA Form 1086 Secondary Participation Guaranty and Certification Agreement.

**Section 1.03. Rules of Interpretation.** This Agreement shall be interpreted in accordance with and governed by the laws of the State of Montana and venue therefore shall be in the First Judicial District in Lewis & Clark County.

**Section 2.01. Purpose.** This Agreement shall govern the rights, interests and obligations of the Lender and the Board with respect to all Participations purchased by the Board from the Lender hereunder, except insofar as the terms hereof shall be modified, amplified or

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amended by the terms of the Participation Certificate issued with respect to a particular Participation Loan. This Agreement shall also govern the servicing obligation of the Lender with respect to Participation Loans.

**Section 2.02. Processing of Participation Loan.** The Board shall not in any event take part in or be responsible for the negotiations with the Borrower leading to the consummation or Participation of a loan, unless requested by the lender and in the presence of the lender.

**Section 3.01. Submission of Information.** The Lender shall provide the Board with sufficient information to enable the Board to determine whether the loans offered for participation conform to the policies, rules, and regulations of the Board.

**Section 3.02. Requirement of Loan.** (1) Any loan to be participated in by the Board shall be evidenced by a Note and a Loan Agreement (if required by the lender or the Board) executed by the Borrower and the Lender in the form approved by the Board. To secure such Note, the Borrower shall execute and deliver to the Lender, and the Lender shall record appropriate Security Agreements including but not limited to those specified hereafter in a form approved by the Board:

(a) if the Project includes real property or buildings, an appropriate Security Agreement granting a lien thereon and a mortgagee's title insurance policy in the current form of American Land Title Association (ALTA) Loan Policy with Extended Coverage, or equivalent, including mechanics' lien and (if available) zoning coverage, issued by a title company satisfactory to the Board, insuring in the amount of such loan the Lender's interest under the Security Agreement as the holder of the mortgage lien of record on such real property, subject to only such exceptions as are acceptable to the Board;

(b) if the Project involves the Borrower having an interest as lessor or as lessee under one or more leases of real, personal or mixed property, an assignment of the Borrower's interest in such leases;

(c) UCC financing statements as required to perfect a security interest in the Collateral; and

(d) such other appropriate instruments as required by the Board.

(2) Any loan must contain a Due on Sale provision in the Loan Documents that all principal and interest payments due under such loan may be accelerated if the Borrower rents, sells or otherwise transfers an interest in the property, including chattel property, or ceases to utilize any of the property for the purpose of which such loan was made.

**Section 3.03. Commitment to Participate.** Upon approval by the Board of an application submitted by the Lender to the Board in accordance with the Loan Policy of the Board, the Board shall issue to the Lender a Commitment Letter setting forth the terms and conditions under which it will participate in a loan.

**Section 3.04. Payment and Delivery of Documents for Loan Participation.** Upon receipt of a Participation Certificate executed by the Lender stating among other things that the Note and other necessary Loan Documents have been fully executed by the Borrower and recorded by the Lender, the Board shall execute the Certificate and pay to the Lender in the case of a loan participation an amount equal to 100 percent of the Board's Participation Interest as first set forth in the Commitment Letter and as shown in the Participation Certificate. The Lender shall deliver to the Board a complete set of the Loan Documents as required by Schedule

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A of the Commitment Letter. The review of all loan documents or documents required under the Commitment Letter by the Board does not constitute the concurrence by the Board of the accuracy, validity or legality of the documents presented as required by the Commitment Letter.

### **Section 3.05. Determination of Interest Rate to be Charged for Participation Loans.**

At the time the Board issues its Forward Commitment to reserve funds to purchase a participation in a commercial loan, it will specify the current interest rate of the Board, established in accordance with its Loan Policy. The interest rate charged by the Lender on a loan participated in by the Board shall be specified in the Board's Commitment Letter. An interest rate reduction may be available for qualified borrowers under the Commercial Loan Policy. Board and Lender interest rates charged for Value-Added Loans are set by law.

**Section 3.06. Interest of Board in Participation Loan.** Each Participation held by the Board will include an interest in all amounts of principal and interest on the Participation Loan to which it relates received by the Lender in payment thereof from whatsoever source said payments are derived and in all Collateral, said interest subject to the provisions of Section 5.04 hereof, to be based upon the Board's Participation Percentage in such Participation Loan. Each Participation in a Participation Loan held by the Board shall be on parity with any other Participations therein and with the undivided interest therein retained by the Lender.

**Section 3.07. Assignability.** The Lender shall not assign its interest in a Participation Loan or any rights with respect thereto or grant other participation interests therein without the prior written consent of the Board. Such consent shall not be unreasonably or arbitrarily withheld. Should the Board assign its Participation Interest, it will notify the Lender of such assignment and such notice shall include the name and address of assignee and instructions on payments to be made under this Agreement.

**Section 4.01. Warranties.** The Lender represents and warrants with respect to each Participation Loan described in any Participation Certificate executed by the Board and Lender, that:

(1) The Lender is the sole legal, equitable and beneficial owner of each of said Participation Loans and has the right to sell and transfer a Participation Interest therein to the Board and has not heretofore sold or transferred or otherwise disposed of any portion of its interest without Board concurrence in any of such Participation Loans or the Collateral therefore.

(2) The property subject to each Security Agreement securing a Loan is, to the best of Lender's knowledge, free and clear of all liens that are prior or superior to the lien of such Security Agreements, except: (1) the lien for future taxes and assessments not yet due and payable, and (2) liens agreed upon in the Board's commitment.

(3) No Loan Documents are in default and there does not exist an event which may result in default under the terms and covenants thereof. No portion of any real property subject to any Security Agreement securing a Participation Loan has been released from such Security Agreement after the date of the applicable mortgage's title insurance policy.

(4) All Loan Documents in connection with each Participation Loan are to the best of Lender's knowledge, valid and enforceable under existing law.

(5) Each Participation Loan complies with all applicable provisions of the Act and Loan Policy promulgated by the Board pursuant thereto.

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**Section 4.02. Further Warranties.** Lender further represents and warrants at all times relevant herein that:

(1) The Lender is and will be authorized to do business in the State of Montana and there are and will be no substantial or material violations on the part of the Lender of any applicable state or federal law, regulation or rule.

(2) Each person executing this Agreement and each Participation Certificate is or will be, at the time of execution and delivery thereof, fully authorized to do so on behalf of the Lender.

(3) As of the date any loan is offered to the Board for Participation, not more than seven percent (7%) in aggregate unpaid principal amount of all Participations theretofore purchased from the Lender by the Board have been delinquent for 90 days or more.

**Section 5.01. Custody of Notes and Loan Documents.** The Lender shall have custody and control of the Notes and the Loan Documents relating to each Participation Loan with full authority, subject to the provisions of this Agreement, to control in the name of the Lender the collection and enforcement thereof, and the utilization of the Collateral therefore, by suit, foreclosure, or otherwise. The Lender shall maintain customary records required by its supervisory authorities as to each loan in which the Board has acquired a participation interest. The Board or its duly authorized agents may inspect the records, controls, accounts, agings, audits, analysis and other files of the Lender relating to each Participation Loan and the relevant Loan Documents during ordinary business hours of the Lender.

**Section 5.02. Remittance of Collections for Participation Loans.** (1) The Lender shall receive all the loan repayments on Participation Loans in trust for the benefit of the Board without commingling and shall promptly remit to the Board its share of all amounts so received. Except as herein provided, the Board shall not have recourse against the Lender, either for the principal or interest on the Participation Loans, except to enforce the obligation of the Lender to remit to the Board its share of principal and interest when, as and if collected by the Lender.

(2) Each remittance to the Board, with the exception of Participation Loans serviced under the SBA 1086 Agreement, shall be accompanied by a Participation Report set forth on Exhibit B hereto.

(3) The Lender shall remit to the Board its proportionate share of all principal and interest payments received by the Lender within five (5) business days of its receipt thereof. The Board's share of interest to be remitted by the Lender shall be originally computed from the date of receipt by the Lender from the Board of the purchase price for its Participation Interest in each Participation Loan, and interest on the Participation Loan shall thereafter be computed by Lender as provided for in the note. Any payment received after the five (5) business days grace period will be subject to a late fee equal to the Board's interest rate, times the late payment amount, times the number of days after the grace period, divided by the method of calculation (365 days, 360 days or 366 days during leap year).

**Section 5.03. Sharing of Repayment Proceeds for Participation Loans.** The Lender shall not acquire any preferential security, surety or insurance to protect its participation interest in a Participation Loan. All repayments, security or guarantee of any nature, including without limitation rights of set-off and counterclaim which Lender or Board jointly or severally may at any time recover from any source whatsoever or have the right to recover on any Participation Loan, shall repay and secure the interest of the Lender and the Board in the same proportion as such interest bears respectively to the unpaid balance of the Participation Loan. The Lender shall notify the Board of any loan or advance by the Lender or of which the Lender has knowledge to

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the Borrower subsequent to a Participation Loan, and if, in the Board's opinion, circumstances require, and the Borrower's consent, if required, is first obtained, enter into a written agreement with the Board providing for the application of collateral or proceeds realized therefrom to the respective loans in a manner satisfactory to the parties hereto.

**Section 5.04. Management of Participation Loans.** (1) The Lender shall have the right to manage, perform and enforce the terms of each Note and the other Loan Documents pertaining to any Participation Loans and to exercise and enforce all privileges and rights exercisable or enforceable by it thereunder and to grant or withhold consents or approvals there under according to the Lender's discretion and in the exercise of its business judgment (subject to the provisions of clause (2) of this Section 5.04), provided that the Lender will not take any of the following described actions with respect to any Participation Loan without the prior written approval of the Board:

- (a) amend or modify any terms of the relevant Note or the other Loan Documents;
  - (b) release any property subject to a Security Agreement (whether or not new collateral is substituted) which it is not obligated to release prior to payment in full of the indebtedness secured thereby or by terms of the Loan Documents; or
  - (c) accelerate the maturity or grant any material extension of time for performance by the Borrower under the relevant Note or any other Loan Document.
  - (d) make an additional voluntary advance to the Borrower under an open end mortgage or deed of trust, secured by the same Collateral.
  - (e) sue or foreclose upon any Security Agreement, which prior approval shall include approval by the Board of the selection of legal counsel for such foreclosure;
  - (f) waive any claim against the Borrower or any guarantor, standby creditor or other obligor of such Loan;
  - (g) disburse any proceeds from fire or other insurance received as a result of fire or casualty damage or loss in excess of \$10,000 covering any Collateral or any award received as a result of any proceeding involving the condemnation of any Collateral, except as permitted by the applicable Security Agreement;
  - (h) consent to the sale, transfer, pledge or assignment of any of the Collateral or the grant of any other security interest in the Collateral by a Borrower; or
  - (i) subordinate the Lender's lien rights in any of the Collateral.
- (2) With respect to each Participation Loan the Lender will:
- (a) exercise the same degree of care that it exercises in the servicing and administration of loans for its own account;
  - (b) service the Participation Loan in accordance with generally accepted banking practices;
  - (c) take all reasonable steps to collect promptly amounts due on each Participation Loan;
- and
- (d) provide the Board with accurate information regarding each Participation Loan.

(3) All funds received from any Borrower or from any other source, or retained as part of the Participation Loan proceeds for the purpose of paying taxes, insurance premium to maintain the insurance coverage required hereby or by the Loan Documents, special assessments, or for the purpose of guaranteeing the repair or completion of improvements to the property subject to any Security Agreement shall be retained and disbursed by the Lender at such time, and from time to time, as the Lender in its discretion shall deem necessary.

(4) Each party hereto acknowledges and agrees that it will, independently and without reliance upon the other party hereto or the directors, officers, agents or employees of such other

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party and instead in reliance upon information furnished by each Borrower and upon such other information as it deems appropriate, make its own independent credit analysis and decision to make, in the case of the Lender, and to participate, in the case of the Board, in each Participation Loan hereunder. Each party hereto agrees that it shall, independently and without reliance on the other party or the directors, officers, agents or employees of the other party continue to make its own independent credit analysis and decisions in taking or in refraining from taking any action under this Agreement. The Board, however, shall be entitled to rely on the accuracy of any and all information provided to it by the Lender regarding each Participation Loan. Each party hereto may employ agents and attorneys-in-fact and shall not be answerable, except as to money or securities received by it or its authorized agents, for the default or misconduct of any such agents or attorney-in-fact selected by it with reasonable care after appropriate investigation. Each party hereto shall be entitled to rely upon any document, paper or instrument reasonable believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and in respect to legal matters, upon the opinion of counsel selected by it.

(5) (a) In the event either party hereto (the "Indemnified Party") shall incur out-of-pocket expenses or liability (other than as a result of fraud, defalcation, negligence, willful misconduct, violation of the covenant of good faith and fair dealing, or unlawful act of the Indemnified Party or its officers and employees) in connection with any Participation Loan, this Agreement, or any Loan Documents, the other party hereto shall pay and indemnify the Indemnified Party upon demand for its ratable share (based upon its Participation Percentage in the Participation Loan with respect to which such expenses or liability was incurred) of such expenses or liability which is not reimbursed by a Borrower. The Lender's Participation Percentage for purposes of this clause (5) shall be the difference between the Board's Participation Percentage and 100%.

(b) In the event either party hereto (the Indemnified Party) shall incur out-of-pocket expenses or liability as a result of the fraud, defalcation, negligence, willful misconduct, violation of the covenant of good faith and fair dealing, unlawful act or failure to exercise the degree of care required herein of the other party, or its officers and employees in connection with any Participation Loan, this agreement or any Loan Documents, the other party hereto shall pay and indemnify the Indemnified Party upon demand the entire amount of such expense or liability which is not reimbursed by a Borrower. The Lender will notify the Board within five business days if a payment on the Participation Loan becomes 60 days past due.

**Section 6.01. Duty of Lender.** The Lender will also promptly notify the Board of the occurrence of any material default under any Participation Loan of which it has knowledge or has received notice. The Lender will not make any effort to exercise its remedies with respect to a default without first sending written notice to the Board specifying the remedies which the Lender proposes to take with respect to such default. If the Board does not give other written instructions to the Lender within 30 days after its receipt of such written proposals, the Lender may proceed with its proposed remedies. If the Board within such 30 day period disapproves the remedies proposed to be taken by the Lender and the Lender and Board cannot agree upon the remedy to be pursued, the decision of the holder of the larger Participation percentage in such Participation Loan shall determine the remedies to be taken.

**Section 6.02. Cost of Remedying Default.** In the event of a default on any Participation Loan, the Board shall share ratably on the basis of its Participation percentage in such Participation Loan in any expenditures necessary to maintain and preserve the position of the Lender with regard to such Participation Loan, including, without limitation, expenditures for taxes, insurance premiums, prevention of waste, repairs, maintenance and attorney's fees, to the

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extent not recoverable from Borrower. Prior notification, including the estimated costs, must be submitted for the Board's approval prior to incurring any expenses related to any event of default or default proceedings, subject to the limitations contained in section 6.01 herein. Reimbursement of such expenditures from the Board will not be due until final liquidation of such Participation Loan, except where such liquidation takes more than 6 months, in which case the Board will remit its pro rata share of costs to the Lender on a semiannual basis.

**Section 6.03. Foreclosure.** In case of foreclosure, Lender shall protect the interest of the Board upon a sale of the Collateral, and Lender shall be required to prosecute any claim for any deficiency judgment to the extent allowed by law for the benefit of the Board unless otherwise instructed by the Board. Lender shall manage and preserve the Collateral until and through final liquidation of the property. The Lender shall, after payment of all reasonable costs and expenses of foreclosure and collection, remit to the Board its pro rata share of all net proceeds received by the Lender as a consequence of such foreclosure proceeding, including, without limitation, the proceeds of the foreclosure sale and the income from the operation of the property pending liquidation. The Lender shall be permitted to enter a bid at a foreclosure sale for the amount due on the Participation Loan plus any fees, expenses or penalties charged by the Lender or the Board for default. Any bid in excess of such amount shall be made only with the consent of the Board. If Lender acquires the Collateral through foreclosure or deed in lieu of foreclosure, the Board shall have an interest in the property equivalent to its Participation Interest in the Participation Loan and title will be in the name of Lender and the Board.

**Section 7.01. Taxes.** The Lender shall use its best effort to insure that all taxes and assessments on the mortgaged property are promptly paid. In the event any mortgagor fails to make payment required to be made under the terms of said mortgage, Lender warrants that it will notify the Board of such fact within thirty (30) days after the same shall have become due and payable.

**Section 7.02. Insurance Required.** Unless waived in writing by the Board, the Lender shall require that the property subject to any Security Agreement (excluding land) is, at all times relevant herein, insured as herein specified. Such insurance shall be evidenced by an insurance policy that is:

- (1) is issued by a reputable, nationally recognized insurance company authorized to do business in the state of Montana;
- (2) is in full force and effect;
- (3) contains a loss payable clause in favor of the Lender; and
- (4) is in an amount acceptable to the Board.

The Board may require additional coverage on specific Loans as it deems necessary which may include, but not be limited to, earthquake, flood, breach of warranty, liability and loss or rents coverage.

**Section 7.03. Insurance on Real Property.** If the property subject to a Security Agreement is or includes real property, insurance coverage on such property shall include loss or damage due to fire, vandalism and optional perils and shall be in an amount of not less than 90 percent of the replacement value of the improvements on the real property.

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**Section 7.04. Insurance on Personal Property.** If the Mortgaged Premises is or includes Tangible Personal Property, the insurance coverage on such property shall include fire, theft, comprehensive, collision and liability.

**Section 7.05. Errors and Omissions Insurance.** Lender is not required to maintain an errors and omissions insurance policy but is requested to submit a copy of said policy to the Board if one is maintained.

**Section 8.01. Independent Contract.** The Lender shall be in the status of and act as an independent contractor and shall in no event be considered an agent or employee of the Board. The Agreement shall not constitute nor be construed to create a partnership or joint venture between the Lender and the Board.

**Section 8.02. Servicing Fees.** As compensation for the administration of Participation Loans under this Agreement, the Lender may retain a servicing fee from the interest collected on each Participation Loan in an amount equal to the amount by which interest paid by the Borrower on such Participation Loan exceeds the interest rate payable to the Board as specified in the Commitment and the Participation Certificate applicable to such Participation Loan. The fees authorized to be charged for change in ownership, modification of loan or late charges may also be collected and retained by the Lender for its own account. Pre-payment penalties, if any, shall be shared pro rata by the parties.

**Section 9.01. Repurchase Upon Lender's Material Breach.** In the event of any material breach by the Lender of any agreement contained herein or the Loan Policy with respect to any Participation Loan not cured to the Board's satisfaction within 30 days, the Lender shall, at the Board's option, repurchase the Board's Participation in such Participation Loan for the principal balance and accrued interest on the Board's Participation therein and other monies advanced by the Board with respect to such Participation.

**Section 9.02. Remedies of the Board.** Upon the failure of the Lender to perform any obligation imposed upon it under this Agreement, the Act or Loan Policy promulgated pursuant thereto, or in any dissolution, termination of existence, insolvency, business failure, appoint of receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law, State or Federal, by or against the Lender, the Board shall have the right to notify the Borrowers and any other obligors of any Participation Loan of the Board's interest therein and demand and receive payment from it to the extent of the Board's Participation Percentage and the Lender, upon demand of the Board, shall assign to the Board, or its designee, the Loan Documents then held by it, reserving unto the Lender, however, its own participation therein.

**Section 10.1. Attorney's Fees.** In the event either party hereto shall institute any action or proceeding against the other party hereto relating to this Agreement, the unsuccessful party in such action or proceeding shall reimburse the successful party for its reasonable attorneys' fees as fixed by the Court.

**Section 10.2. Notices.** All notices which may be required herein shall be in writing and shall be considered to have been given as of the date and time when the same is deposited in a

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United States Post Office with postage prepaid and mailed by registered or certified United States Mail, return receipt requested, to the Lender at the following address:

and to the Board at the following address:

*Board of Investments  
2401 Colonial Drive, 3<sup>rd</sup> Floor (59601)  
P.O. Box 200126  
Helena, MT 59620-0126*

**Section 10.3. Provisions Binding.** The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

**Section 10.4. Waivers, etc.** No failure on the part of the Board to exercise and no delay in exercising, any power or right hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right. The remedies herein provided are cumulative and exclusive of any remedies provided by law.

**Section 10.5. Amendments.** The Board or the Lender may change the terms and conditions of this Agreement upon notice to the other party for future or new loans or as to existing Participation Loans with respect to the affected party's undivided interest if such changes are necessitated because of changes or amendments to the Internal Revenue Code of 1954, as amended, to regulations promulgated there under or rulings interpreting the same, to Montana law, or to federal law or regulations applicable to the Lender. Should the Board or the Lender desire any other amendment, the party requesting the amendment shall notify the other party thereof in writing. If the other party will not agree to the proposed amendment, the party requesting the amendment may terminate this Agreement, but this Agreement shall continue to be operative as to the Participation(s) already purchased. Notwithstanding the above provisions, the Board may, from time to time, as required by applicable law and regulation decrease the interest rate payable by the Borrower on the Board's Participation.

**Section 10.6. Rights and Authority Irrevocable.** All rights and authority given to the Board under this Agreement are irrevocable so long as Board owns any Participation in any Participation Loan.

**Section 10.7. Annual Report of Financial Condition.** Each year, within ninety (90) days after Lender's fiscal year-end, Lender shall submit a copy of its year-end financial statement and the related income and expense statement to the Board. Both statements must be certified by a certified public accountant. If the Lender is a state or federally supervised bank or savings and loan association and audited statements are not obtained each year, a copy of the year-end statements as furnished to the regulatory agencies may be submitted in lieu of the audited statements.

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**IN WITNESS WHEREOF**, The Lender and the Board have caused this agreement to be duly executed on the date first above written.

**BOARD OF INVESTMENTS**

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

\_\_\_\_\_  
Lender

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

Attest:

\_\_\_\_\_  
(CORPORATE SEAL)

**Exhibit A**  
**LOAN PARTICIPATION CERTIFICATE**

Approved Lender Number: \_\_\_\_\_  
Approved Lender's Routing/Transit No.: \_\_\_\_\_

BOI Loan Number: \_\_\_\_\_

This certificate is issued by the undersigned institution (Approved Lender) to the Montana Board of Investments (Board) for the loan to be participated in by the Board in accordance with its Commitment Letter dated \_\_\_\_\_ (Commitment Letter). It represents the original stated interest in the following loan:

Borrower: \_\_\_\_\_ Outstanding Principal Balance: \$ \_\_\_\_\_

Maturity Date: \_\_\_\_\_

Date of Note: \_\_\_\_\_ Effective Interest Rate to Borrower: \_\_\_\_\_%

Approved Lender's Share: Amount \$ \_\_\_\_\_ Interest Rate: \_\_\_\_\_% Percentage of Total: \_\_\_\_\_%

Board's Share: Amount \$ \_\_\_\_\_ Interest Rate: \_\_\_\_\_% Percentage of Total: \_\_\_\_\_%

Board's Net Yield: \_\_\_\_\_% + Approved Lender's Service Fee: \_\_\_\_\_%

With regard to this loan, the Approved Lender certifies as follows:

- 1) That all Loan Documents described in the Commitment Letter have been executed by the Borrower and Approved Lender and conform to the Commitment Letter;
- 2) That all Security Documents described in the Commitment Letter have been filed and recorded by the Borrower or the Approved Lender with the appropriate county and state officials; and
- 3) That the loan has been fully disbursed or, in the case of a Participation Loan, will be fully disbursed upon receipt of the Board's share.

The Approved Lender and Board, by acceptance hereof, agree to the following:

- 1) This certificate is effective as of its date and is issued subject to the provisions hereinafter contained.
- 2) The Approved Lender will diligently service the loan in accordance with the Servicing Agreement of the Board of Investments between the Approved Lender and the Board, and in the case of the purchase by the Board of a participation in a federally guaranteed loan, the Approved Lender will service the loan in accordance with the appropriate secondary market agreement required by the federal agency.
- 3) The Board's participation interest in the loan is transferable.

Dated: \_\_\_\_\_, \_\_\_\_\_.

Approved Lender: **Approved Lender/city**

ATTEST:

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

ACCEPTED:

MONTANA BOARD OF INVESTMENTS

By: \_\_\_\_\_  
Administrative Officer

## Exhibit B

Please fill in all blanks to ensure proper reconciliation.

This form is available electronically by contacting April Madden, Accounting Staff, In-State Loan Programs, by phone at 444-0003 or by email: [amadden@mt.gov](mailto:amadden@mt.gov)

<b>BOARD OF INVESTMENTS PARTICIPATION REPORT</b> ON LOANS SERVICED BY APPROVED FINANCIAL INSTITUTIONS PURSUANT TO THE TERMS OF PARTICIPATION OR GUARANTY AGREEMENT UNDER WHICH THIS LOAN WAS MADE
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<b>FAX TO:</b> BOARD OF INVESTMENTS (406) 444-4268	<b>BOI PARTICIPATION UNDER ITS:</b> Business Loan Participation Program Federally Guaranteed Loan Program (excluding SBA)
1. COMPLETE ON EACH REPORT:  Amount of Note:           \$ _____  Date of Note:                _____	<b>BOI LOAN NUMBER:</b>
Maturity Date:             _____	<b>BORROWER (Name):</b>
Interest is calculated on: ____30/360____Actual days/365____Other (explain below)	<b>Lender (Name and Address):</b>
<b>Next payment date:</b> _____	
<b>Total required payment amount:</b> \$ _____	

Repayment\*

2. Repayment received _____, _____ on installment due _____, _____ in the amount of.....	\$ _____
3. Interest period: From _____, _____ to _____, _____. Number of days .....	\$ _____
4. BOI's share of interest (% rate on % of gross principal balance).....	\$ _____
5. LENDER's share of interest:	
a) LENDER's rate (% rate on % of gross principal balance).....	\$ _____
b) LENDER's % service fee on % of BOI's share of gross principal balance.....	\$ _____
TOTAL LENDER's share (a + b) .....	\$ _____
6. Total interest (Item 4+Item 5).....	\$ _____
7. Total principal (Item 2 - Item 6) .....	\$ _____
8. BOI's share of principal:( % of Item 7).....	\$ _____
9. LENDER's share of principal:( % of Item 7) .....	\$ _____
10. <b>PAYMENT DUE TO BOI**:</b> (Item 4+Item 8) .....	\$ _____

Balance of Loan Account	Gross	BOI's Share	LENDER's Share
11. Principal balance from previous report.....			
12. Less principal repayment, if any, reported above.....			
13. Current outstanding loan balance .....			

**DEFAULTS (if any) AND COMMENTS:**

Authorized Signature\*\*:

Name/title (Please print or type)	Phone No.:	Fax No.:	Date of Report:
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\* In the event the borrower's remittance includes amounts for taxes, etc., only that portion of the remittance applicable to principal and interest should be reported.  
 \*\* Signature authorizes the Board of Investments to initiate ACH transfer for the "Payment to BOI" amount indicated.

**Exhibit C**

CTL No. 724- <<last 4 digits of BOI loan number>>

OMB NO.: 3245-0185

EXPIRATION DATE: 2/28/2017

SBA LOAN NUMBER \_\_\_\_\_

**SECONDARY PARTICIPATION GUARANTY AGREEMENT**

**IMPORTANT INFORMATION**

THIS FORM IS TO BE USED FOR THE INITIAL TRANSFER ONLY. ALL SUBSEQUENT TRANSFERS MUST USE THE DETACHED ASSIGNMENT SBA FORM 1088. LOANS SOLD USING SBA FORM 1084 MUST BE CERTIFICATED PRIOR TO RESALE: USE SBA FORM 1085.

**A. LENDER CERTIFICATIONS.** The LENDER CERTIFIES, by signing this document among other things that: (See paragraphs 3, 10 and 20 of the Terms and Conditions herein)

- (1) Lender certifies to the best of its knowledge that it has underwritten, closed and serviced the loan in a prudent manner and in accordance with all SBA Loan program requirements as that term is defined in 13 C.F.R. §120.10,
- (2) Lender, including its officers, directors and employees, has no knowledge of a default by Borrower and has no knowledge or information that would indicate the likelihood of a default,
- (3) The Lender will not share any premium received from this sale with a Service Provider, packager, or other loan referral source,
- (4) The loan is not a revolving loan or line of credit facility,
- (5) Lender has paid the SBA guaranty fee,
- (6) The loan is fully disbursed, and
- (7) Lender acknowledges that it has no authority to unilaterally repurchase the Guaranteed Interest from Registered Holder without the written consent of the SBA.

**B. BORROWER PAYMENTS.** Lender shall send to the Fiscal and Transfer Agent ("FTA") the FTA share of all Borrower payments received after settlement of the loan sale. LENDER WILL NOT SEND ANY PAYMENTS DIRECTLY TO THE REGISTERED HOLDER OR TO THE BROKER/DEALER. Lender will retain a copy of this Form. Lender will not receive a return copy of this Form after settlement. The Wire transfer receipt from the settlement through FTA will be the Lender's notification that the sale is complete.

**C. LENDER PAYMENT AND LATE PAYMENT PENALTY.** Lender's Guaranty Loan Status and Lender Remittance Form (SBA Form 1502) shall be due at FTA on the third calendar day of every month, or the next business day if the third is not a business day. On any payment

not received in the offices of FTA by 5 PM Eastern Time on the second business day after the due date, FTA will, on behalf of SBA, levy a late payment penalty of five percent (5%) of the amount remitted late, or \$100, whichever is greater (subject to a maximum penalty of \$5,000 per month). This penalty will be paid through FTA along with the late penalty identified in paragraph 6(c) that is due to FTA. (See paragraph 6 of the Terms and Conditions.)

**D. PAYMENT MODIFICATIONS.** Lender may approve one deferral of payment for up to three consecutive monthly payments without obtaining prior permission from Registered Holder. Lender shall immediately notify FTA and SBA of any deferral. Any other payment modification must receive prior approval by Registered Holder. Requests for payment modification must be forwarded to FTA which will forward the proposed modification to Registered Holder or provide the name of such Registered Holder to Lender for direct negotiations at Registered Holder's discretion. (See Paragraph 2 of the Terms and Conditions.)

**E. BORROWER PREPAYMENTS.** For loans approved by or on behalf of SBA after February 14, 1985, Lender must give ten (10) business days advance written notice to FTA to allow time for FTA to request that Registered Holder return the Certificate. On the date of prepayment, Lender will wire funds to FTA consisting of principal and accrued interest through the date immediately preceding the date funds are wired, plus any penalty or other fees due to FTA. (See Paragraph 15 of the Terms and Conditions.)

**F. LENDER REPURCHASES.** Unless all conditions in paragraph 20 are met, Lender may repurchase a loan only on a willing buyer-willing seller basis. Lender liquidity or a desire to add loans to a portfolio are not acceptable reasons to pay off a loan at par. (See Paragraphs 3 and 20 of the Terms and Conditions.)

**G. PROGRAM FEES.** There is an ongoing fee collected from all payments received from the Lender, which is transmitted to SBA to defray program expenses, and subject to change from time to time. In addition, FTA will withhold from the settlement transaction one-half of the premium amount in excess of 10% of the loan balance. This amount is also sent to SBA to defray program expenses and will not be refunded under any circumstances. (See Section I of the Terms and Conditions.)

## **TERMS AND CONDITIONS**

The U.S. Small Business Administration, an Agency of the United States Government ("SBA") and the Lender named below ("Lender") entered into a guaranty agreement on SBA Form 750 ("750 Agreement") applicable to a loan ("Loan") made by Lender in participation with SBA to the Borrower ("Borrower") named below evidenced by Borrower's Note and any modifications thereto ("Note") a copy of which is attached hereto and incorporated by reference. Lender is the beneficiary under the 750 Agreement of SBA's guaranty of the specified percentage of the outstanding balance of the Loan ("Guaranteed Interest").

**Section I: Borrower Information and Lender Certifications**

Lender \_\_\_\_\_ Borrower \_\_\_\_\_  
Address \_\_\_\_\_ Address \_\_\_\_\_  
\_\_\_\_\_ Zip \_\_\_\_\_ \_\_\_\_\_ Zip \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone \_\_\_\_\_

**LENDER CERTIFIES THE FOLLOWING AS OF THE DATE OF LENDER'S SIGNATURE:**

Date of 750 Agreement \_\_\_\_\_ Percent of SBA Guaranty \_\_\_\_\_  
Date of Note \_\_\_\_\_ Original Face Amount \$ \_\_\_\_\_  
SBA Loan Authorization Date \_\_\_\_\_ (Date of SBA Form 529B)  
Outstanding Principal Amount of Loan \$ \_\_\_\_\_  
Outstanding Principal Amount of Guaranteed Interest \$ \_\_\_\_\_  
(This is the "Par Value")

**THE SBA GUARANTY FEE WAS PAID ON** \_\_\_\_\_  
[Date]

Date of First Disbursement of Loan \_\_\_\_\_  
[Date]

Date of Final Disbursement of Loan \_\_\_\_\_  
[Date]

Guaranteed portion has a [ ] fixed rate or [ ] variable rate (check one).

If variable: Base Rate: \_\_\_\_\_  Prime  LIBOR  SBA Peg Rate \_\_\_\_\_

Unguaranteed portion has a [ ] fixed rate or [ ] variable rate (check one).

If variable: Base Rate: \_\_\_\_\_  Prime  LIBOR  SBA Peg Rate \_\_\_\_\_

Interest is paid to, but not including \_\_\_\_\_  
[Date]

Interest is calculated on [ ] 30/360 or [ ] Actual Days/365 (check one).

**(OTHER METHODS ARE PROHIBITED)**

**THIS INTEREST ACCRUAL SHALL BE MAINTAINED FOR THE LIFE OF THE LOAN.**

SBA shall retain a program fee equal to \_\_\_\_\_ (to be completed by the Lender) of one percent per year of the guaranteed principal amount outstanding. Such fee shall be collected by the FTA from all payments received from Lender. FTA shall transmit such fees to SBA on a regular basis, no less frequently than monthly.

There shall be a minimum lender servicing fee required by SBA. This fee shall be published from time to time in the *Federal Register*. The minimum servicing fee as of the date of publication of this form is 0.4% per annum for all loans. There shall also be a minimum premium protection fee for any Guaranteed Interest sold at a price greater than Par Value. This fee shall be published from time to time in the *Federal Register*. The minimum premium protection fee for those Loans sold on the secondary market at a premium as of the date of publication of this form is 0.6% per annum. For any Guaranteed Interest sold at a price greater than Par Value, the total minimum lender fees, as of the date of publication of this form, are 1.0% per annum.

Except for the period between final disbursement and the first interest adjustment date, Lender's total fees must remain constant for the life of the loan. Lender's total fees, as computed on the unpaid principal amount of the Guaranteed Interest, shall be entered next to the phrase "Lender's Permanent Fee" below. If this Agreement relates to a variable rate loan, the total fee may be adjusted for the period from final disbursement to the first adjustment date to conform the rate to market rates. If such an adjustment is used, enter the initial fee next to the phrase "Lender's Initial Fee" below.

Lender's Permanent Fee \_\_\_\_\_

Lender's Initial Fee \_\_\_\_\_

- Optional - Variable Rate Loans Only - If initial fee is different than permanent fee.
- Lender's Initial Fee must conform to the minimum fee requirements described above.

Price paid for the Guaranteed Interest. (Net of accrued interest. Otherwise include ALL money and other items of value exchanged.)

Price paid by purchaser: \$ \_\_\_\_\_ % of Par \_\_\_\_\_

SBA shall retain a program user fee equal to 50% of the portion of the sale price, which is in excess of 110 percent of the principal amount outstanding of the guaranteed portion. Such fee shall be collected by the FTA and shall be remitted by FTA to SBA on a regular basis, no less frequently than monthly, pursuant to FTA's contract with SBA. SBA will not refund such program user fee under any circumstances.

CASH FLOW YIELD based upon Constant Prepayment Rate. (Enter both mortgage and bond equivalent yield.) For a variable rate loan, the yield should be based upon the current net rate and should be entered as a spread from the Base Rate. EXAMPLE: Base Rate + 1% based upon 5% Base Rate and current net Rate of 6%.

Constant Annual Prepayment Rate assumption \_\_\_\_\_% per annum

Certificate Interest Rate: \_\_\_\_\_% (Borrower's Note rate less applicable fees)

Certificate Cap \_\_\_\_\_% Certificate Floor \_\_\_\_\_% (if applicable)

Mortgage Yield:

(Fixed Rate Loan) \_\_\_\_\_%  
(Variable Rate Loan) Base Rate: \_\_\_\_\_  Prime  LIBOR  SBA Peg Rate  
(+/-) \_\_\_\_\_% based on \_\_\_\_\_% Base

Bond Equivalent Yield:

(Fixed Rate Loan) \_\_\_\_\_%  
(Variable Rate Loan) Base Rate: \_\_\_\_\_  Prime  LIBOR  SBA Peg Rate  
(+/-) \_\_\_\_\_% based on \_\_\_\_\_% Base

Lender hereby assigns the Guaranteed Interest to Purchaser/Registered Holder as follows:

Name \_\_\_\_\_

Address \_\_\_\_\_

Zip code

Contact Person \_\_\_\_\_ Telephone \_\_\_\_\_

Under the penalties of perjury, Purchaser/Registered Holder certifies that its **Taxpayer Identification Number** is \_\_\_\_\_, is not subject to backup withholding pursuant to an Internal Revenue Service Notice, and is a U.S. citizen or other U.S. person, as defined in Internal Revenue Service Form W-9. Failure to provide a Taxpayer Identification Number will subject interest earned to backup withholding.

Registered Holder requests SBA to issue through FTA a Guaranteed Interest Certificate ("Certificate") evidencing ownership of the Guaranteed Interest in the name of Registered Holder (such person or entity, or any subsequent transferee, during its respective period of ownership of the Certificate to be called "Registered Holder"). SBA, Lender and Registered Holder (for itself and for any subsequent Registered Holder) agree to the appointment by SBA of FTA to serve as the agent to transfer Certificates and to receive loan repayments, and to transmit such payments to the Registered Holder.

A written notification to or demand upon SBA pursuant to this Agreement shall be made through FTA to:

SBA Servicing Office \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

SBA Servicing Office Code (Please see Attachment II at the end of this document) \_\_\_\_\_

**Section II: Lender, Registered Holder and FTA Rights and Responsibilities.**

**1. Lender's Sale of Guaranteed Interest.** Lender has sold the Guaranteed Interest and acknowledges that it has received value for that Guaranteed Interest. Lender has given notice and acknowledgment of the transfer of the Guaranteed Interest by completing the following legend on the Note:

The guaranteed portion of this Note has been transferred to a Registered Holder for value.

Dated \_\_\_\_\_

(Lender)

Lender has delivered or hereby delivers to FTA a photocopy of the Note and any modifications thereto with the legend; such photocopy shall be incorporated into this Agreement. This legend shall serve as notification for any future transfer of the Guaranteed Interest. The date of the legend shall be on or before the date of settlement for the sale of the guaranteed interest.

The photocopy of the note and any modifications thereto must have a legend stating that the photocopy is a true and certified copy of the original.

**2. Loan Servicing.** Lender shall remain obligated under the terms and conditions of the 750 Agreement, and shall continue to service the Loan in the manner set forth in the 750 Agreement and SBA Loan Program Requirements. Modifications to the 750 Agreement or the Note that do not affect the repayment terms of the Note may be effected by Lender or SBA without the consent of Registered Holder (for itself and any subsequent Registered Holder). Lender, at the request of borrower, may grant one deferment of Borrower's scheduled payments for a continuous period not to exceed three (3) months of past or future installments. Lender shall immediately notify FTA and the SBA Servicing Office in writing of any deferment. The notification will include (i) the SBA Loan Number, (ii) the Borrower's name, (iii) the terms of such deferment, (iv) the date Borrower is to resume payment and (v) reconfirmation of the basis of interest calculation (e.g. 30/360 or Actual Days/365). Interest is not waived, only deferred. Subsequent to the deferment period, payments received from Borrower will first be applied to accrued interest until such time as interest is paid to a current status, then to principal and

interest. Registered Holder may not demand repurchase of the Guaranteed Interest during the deferment period, or before Borrower's failure to pay the first scheduled installment following the deferment period. Lender shall not authorize any additional deferment, or any extension of Loan maturity without the prior written consent of the Registered Holder.

No change in terms and conditions of repayment of the Note other than the deferment authorized in this paragraph shall be made by Lender or SBA without the prior written consent of Registered Holder. A request for such payment modification must be forwarded by Lender to FTA. FTA will forward the proposed modification to Registered Holder. The Registered Holder must respond to the request within thirty (30) calendar days of the date of the request from FTA. Lack of response will be construed by Lender and FTA as nonconsent, and appropriate action under Paragraphs 10, 11 or 20 of this Agreement will be taken. FTA, at the discretion of Registered Holder, may provide the name of Registered Holder to Lender for direct negotiation of the modification.

**3. Representations and Acknowledgments of Lender.** Lender hereby certifies that the Loan has been made and fully disbursed to Borrower, and that the full amount of the guaranty fee has been paid to SBA. The outstanding principal amount of the Guaranteed Interest and date to which interest is paid as certified by Lender is accepted by SBA, and has been warranted by SBA to the Registered Holder as of the SBA Warranty Date. The Warranty Date is the date this Agreement is settled by Lender and Registered Holder through FTA. Lender shall be liable to SBA for any damage to SBA resulting from any error in (i) the certified principal amount, (ii) percentage of Guaranteed Interest, and/or (iii) date to which interest is paid. Lender also represents that as of the Warranty Date, which is the date of settlement of this transaction as determined by the SBA and FTA, neither Lender nor any of its directors, officers, employees, or agents has or should have through the exercise of reasonable diligence, any actual or constructive knowledge of any default by Borrower on the Note, or has any information indicating the likelihood of a default by Borrower or the likelihood of prepayment of the Loan by Borrower by refinancing or otherwise.

If Lender has repurchased the Guaranteed Interest pursuant to Paragraph 10 or 20, and if the Borrower subsequently makes installment payments on the Note in full for a period of twelve (12) consecutive months, Lender may resell the Guaranteed Interest it had repurchased in the SBA secondary market.

Lender hereby acknowledges that it has no authority pursuant to this Agreement to unilaterally repurchase the Guaranteed Interest from Registered Holder at par without the written consent of SBA.

Lender also acknowledges that SBA reserves the right to recover any outstanding Lender obligations to SBA by setting off any and all funds due to Lender related to Secondary Market transactions or from SBA including but not limited to SBA guaranty payments and applying such funds to Lender's outstanding obligations to SBA.

**4. Obligations and Representations of Registered Holder.** SBA shall purchase the Guaranteed Interest from Registered Holder pursuant to the terms of this Agreement regardless

of whether SBA has any knowledge of possible negligence, fraud or misrepresentation by Lender or Borrower, provided neither Registered Holder nor any person or entity having the beneficial interest in the Guaranteed Interest participated in, or at the time it purchased the Guaranteed Interest had knowledge of, such negligence, fraud or misrepresentation.

Subject to the provisions of 18 U.S.C. §1001 (relating among other things to false claims) Registered Holder, and any person or entity having the beneficial interest therein, hereby warrants that it was not the Borrower, Lender or an "Associate" of Lender, or anyone standing in the same relationship to Borrower ("Associate" is defined in 13, C.F.R., § 120). Registered Holder warrants that it had neither participated in nor been aware of any negligence, fraud or misrepresentation by Lender or Borrower with respect to the Note or related Loan documentation. Neither execution of this Agreement by SBA, nor purchase by SBA from Registered Holder, shall constitute any waiver by SBA of any right of recovery against Lender, Registered Holder, or any other person or entity.

Registered Holder (for itself and each subsequent Registered Holder) hereby acknowledges that the Loan may be terminated on a date other than its maturity date. At that time, the Certificate will be called for redemption, at par, and the Registered Holder must submit an affidavit attesting to the provisions of this paragraph. The Certificate will cease to accrue interest as of the date of such termination, regardless of whether the Certificate is surrendered and the affidavit is received.

**5. Issuance of Guaranteed Interest Certificates.** SBA, Lender, and Registered Holder (for itself and each subsequent Registered Holder) agree that ownership of the Guaranteed Interest shall be evidenced by a Certificate to be issued by SBA. SBA shall issue such Certificate by designating and authorizing such issuance by FTA, or through its own facilities.

FTA shall be the custodian of the executed original of this Agreement. The Agreement shall be delivered to FTA immediately after execution by Lender and Registered Holder. Each Registered Holder shall receive the Certificate described herein. Registered Holder may obtain from FTA a copy of the executed Agreement pertaining to the Guaranteed Interest represented by the Certificate upon payment of a reproduction fee.

Upon execution of this Agreement and delivery to FTA, FTA shall issue to Registered Holder (or to Registered Holder's assignee if FTA is provided written information on a timely basis) the Certificate evidencing the ownership of the Guaranteed Interest in the Loan. If Registered Holder is not the person or entity having the beneficial interest in the Certificate, Registered Holder hereby represents that it has obtained authorization from such holder of beneficial interest appointing Registered Holder as agent for such person or entity with respect to all transactions arising out of the respective obligations under this Agreement.

The Certificate shall identify the Guaranteed Interest and shall state, among other things: (i) Name of Registered Holder, (ii) the Principal Amount of Guaranteed Interest as of the Warranty Date, (iii) the Certificate Interest Rate, and (iv) the Borrower's Payment Date.

Transfer of the Guaranteed Interest by Registered Holder may be effected by the transferee: (i) obtaining from the transferor the executed Detached Assignment and Disclosure Form (SBA Form 1088), (ii) presenting the Certificate and executed Detached Assignment and Disclosure Form to FTA for registration of transfer and issuance of a new Certificate, (iii) paying to FTA a Certificate issuance fee set from time to time by SBA, and (iv) presenting to FTA the exact spelling of the name in which the new Certificate is to be issued, complete address and taxpayer identification number of the new Registered Holder, name and telephone number of the person handling the transfer, and complete instructions for delivery of the new Certificate.

## **6. Obligations of Lender.**

- a. FTA must receive from Lender by the third calendar day of every month, or the next business day thereafter if the third is not a business day, ("FTA Due Date") the FTA's share of all sums Lender received from Borrower as regularly scheduled payments during the preceding month. By the same date, Lender shall provide the following information on the Guaranty Loan Status and Lender Remittance Form (SBA Form 1502), (or an exact electronic or facsimile format), with respect to each Loan, which Lender has sold to a Registered Holder and which, is registered with the FTA. Lender acknowledges that "each Loan" means all Loans registered with the FTA regardless of which version of SBA Form 1086 was executed at the time of sale or transfer. SEE PAYMENT CALCULATION EXAMPLE ATTACHED TO THIS AGREEMENT.
  - 1) The SBA Loan Number
  - 2) The Note interest rate (or rates if the interest rate on a variable rate loan changed during the payment period)
  - 3) The guaranteed interest amount due the FTA
  - 4) The guaranteed principal amount due the FTA
  - 5) The total guaranteed amount due the FTA for the particular Loan
  - 6) The time period covered by the interest rate(s) in Item 2
  - 7) The number of days in the interest period
  - 8) The calendar basis (30/360 or Actual Days/365)
  - 9) The closing Guaranteed Interest for the Loan
  - 10) A grand total for Items 3, 4 and 5 of all loans sold
  - 11) A late payment penalty (if applicable)

- b. With the exception of prepayments pursuant to Paragraph 15 of this Agreement, payments received other than as regularly scheduled in the previous month must be remitted by Lender to FTA within two (2) business days of receipt of collected funds. Such remittance shall include the information described in Items 1 to 11 above.
- c. As stated in subparagraph (a) above, Lender remittance of the Form 1502 and the funds collected are due to FTA by the FTA Due Date. **POSTMARKS ARE NOT CONSIDERED AS PROOF OF RECEIPT. THE REQUIREMENT IS RECEIPT BY FTA.** If Lender remittance, including complete payment information as specified in subparagraph (a) is not received in the office of the FTA by 5 PM Eastern Time on the second business day after the FTA Due Date, Lender shall pay:
  - (i) a late payment penalty to FTA equal to the interest on the unremitted amount at the rate provided in the Note, less the rate of Lender's servicing fee; and
  - (ii) a late payment penalty to FTA calculated at a rate of twelve percent (12%) per annum, on the unremitted amount; and
  - (iii) a late payment penalty to SBA (collected by FTA), which is the greater of \$100 or five percent (5%) of the unremitted amount.

There is no limit on the penalty calculated in (i) and (ii) above. There is a \$5,000 per month per reporting unit limit for the penalty identified in (iii) above. **SEE EXAMPLE OF LATE PAYMENT PENALTY CALCULATION ATTACHED TO THIS AGREEMENT.**

If these penalty fees are not included in the remittance, FTA, on behalf of SBA, shall levy such late payment penalties on Lender. Failure by Lender to pay such penalty and collection fees within ten (10) business days of receipt of a bill for such fees may constitute a significant violation of the Rules and Regulations of the Secondary Market and a violation of SBA Loan Program Requirements. FTA and SBA reserve the right to withhold these penalty fees from settlement of any future Guaranteed Interest sale, or any payment made by SBA or FTA to Lender.

FTA will retain the penalty and collection fees due FTA and forward the fee due SBA at the end of each month, pursuant to FTA's contract with SBA.

- d. Lender agrees to work with SBA and FTA, at no charge, to reconcile immediately any Loan in which the interest paid-to-date on the Lender's books differs from the records of the FTA by three (3) days or more and/or has a principal discrepancy greater than \$10.00. Lender agrees to provide a transcript of account within ten (10) business days of receipt of a request from SBA or FTA. Failure of Lender to provide a transcript upon request may cause the Lender to be fined \$100 by SBA.
- e. Lender's total fees as computed on the unpaid principal amount of the Guaranteed Interest for the period of actual services performed by Lender shall remain as specified in Section I above for the life of the Loan. These Lender fees are not transferable except to an entity

to which servicing of the loan is assigned under the provisions of the Form 750 Agreement and SBA Regulations and Standard Operating Procedures.

- f. Lender agrees to deposit the pro rata share of borrower's payment due to the FTA in a trust account with the name "Colson Services Corp., FTA, in trust for the individual security beneficiaries".
- g. For defaulted Loans in which the SBA has purchased the Guaranteed Interest, the Lender is responsible for all accrued interest in excess of 120 days from the interest paid to date used to compute the purchase amount.

## **7. Obligations of FTA.**

- a. FTA shall have the obligation to remit to Registered Holder payments received pursuant to Paragraph 6 of this Agreement (less applicable fees and penalties, if any), as follows:
  - (i.) Investor payment date will be the fifteenth of the month or next business day if the fifteenth is not a business day. Any payment received by the FTA up to the second business day prior to the investor payment date will be sent to the Investor on the investor payment date.
  - (ii.) Any payment received by FTA on or after the second business day prior to the Investor payment date of the month following Borrower's scheduled payment will be remitted to Registered Holder within two (2) business days of receipt of immediately available funds by FTA. Any late payment penalty received by FTA pursuant to subparagraphs 6(c)(i) and 6(c)(ii) of this Agreement allocated to the period after the fifteenth day, or the next business day if the fifteenth is not a business day, of such following month shall be remitted to the Registered Holder. The balance of such penalties shall be retained by FTA.
  - (iii.) Other amounts received from Lender by FTA will be held and applied as required by this Agreement.
  - (iv.) FTA may offset from payments due to Registered Holder any prior overpayments made to Registered Holder.
- b. Prepayments pursuant to Paragraph 15 of this Agreement or full redemption payments received by FTA from Lender or SBA shall be remitted by FTA to Registered Holder by wire transfer within two (2) business days of receipt of immediately available funds by the FTA. Payment on full redemption of the Certificate will be made only after presentation of the Certificate to FTA by Registered Holder. FTA shall retain a final transfer fee upon redemption.

- c. Each remittance by FTA to Registered Holder shall be accompanied by a statement of (i) the amount allocable to interest, (ii) the amount allocable to principal, and (iii) the remaining principal balance as of the date on which such allocations were calculated.
- d. If FTA fails to make timely remittance to Registered Holder in accordance with this Paragraph 7, FTA shall pay to Registered Holder, (i) interest on the unremitted amount at the rate provided in the Note less applicable fees, and (ii) a late payment penalty calculated at a rate of 12% per annum on the amount of such payment. In addition, FTA shall pay a fee of \$100 per loan to SBA. The fee paid to SBA shall be limited to not more than \$50,000 per month.
- e. FTA agrees to identify to Lender each month any Loan in which the paid-to-date on its books differs by three (3) days or more from the paid-to-date on the books of Lender and/or has a principal balance discrepancy greater than \$10.00, provided the information required by Paragraph 6(a) has been submitted to FTA by Lender. Such identified differences will be reconciled on a timely basis.
- f. FTA agrees to issue Certificates within two business days of settlement or receipt of the Form 1088.
- g. FTA agrees to acknowledge any request from Registered Holder for late payment claims within ten (10) business days of receipt.
- h. FTA agrees to forward to Registered Holder, within five (5) business days of receipt, any servicing request requiring concurrence of Registered Holder. FTA agrees to forward Registered Holder's response to Lender within five (5) business days of receipt. If FTA does not receive a response from Registered Holder within thirty (30) calendar days from the date of the request, Registered Holder will be deemed to have submitted a response of nonconsent. FTA is directed to take appropriate action pursuant to Paragraphs 10, 11 or 20 of this Agreement.
- i. Where the Guaranteed Interest is a part of a Pool pursuant to Section 120.600 of the SBA Rules and Regulations as amended, the FTA, as manager of the Pool, will, on behalf of the Registered Holder of Pool Certificates, agree to servicing actions by Lender that have been approved by SBA that will not affect the rights of the Registered Holder.
- j. FTA agrees to pay accrued interest for any Loan, which FTA fails to include in the late payment report described in Paragraph 10(a). FTA shall be responsible for interest beginning 90 days after the interest paid to date of the Loan and continuing until 30 days after the SBA Servicing Office receives notification of the arrearage.
- k. The FTA shall process loan information received from lenders via SBA Form 1502 reporting and submit the data electronically to SBA on a daily basis. FTA can receive SBA Form 1502 statements from Lenders via various delivery methods, including but not limited to: hard copy via mail or fax; diskette, CD, DVD; e-mail; or FTA's website. Upon receipt of the loan information, FTA shall validate the data, and accept those

elements that match the data file provided by SBA. FTA will provide an electronic update back to SBA each business day. The FTA shall be responsible for contacting lenders to correct loan data submitted for the prior reporting period, and to reconcile missing or incorrect loan information. Lender shall respond to FTA request for information within 5 business days of receipt of such request. Lender's response to FTA request for loan information shall be substantive enough so FTA can reconcile loan. Reconciliation will be performed on a daily basis during the course of the month following the last reporting period. The FTA shall collect and track the known loan data errors that were corrected during the month following a reporting period. FTA shall verify SBA Form 1502 data reported by lenders against edit criteria provided by SBA. FTA shall report information to SBA on loan accounts that remain uncorrected. Uncorrected loan account information shall include GP number, name of lender and description of loan error. From time to time, FTA shall provide additional reports derived from the SBA Form 1502 reporting process described above, as prescribed by SBA.

**8. Transferability of Guaranteed Interest.** Each Registered Holder maintains under this Agreement the right to assign the Guaranteed Interest. Each Registered Holder of the Guaranteed Interest shall be deemed to have represented that to the best of its knowledge, it has, and so long as it is a Registered Holder will have no interest in the Borrower, the Note or the collateral hypothecated to the Loan, other than the Guaranteed Interest held under this Agreement. Each Registered Holder represents that it will not service or attempt to service the Loan, or secure or attempt to secure additional collateral from Borrower.

Without the consent of SBA, Lender or FTA, Registered Holder may transfer the ownership of the Guaranteed Interest and all of its rights and obligations under this Agreement to a subsequent assignee via the SBA Form 1088, Form of Detached Assignment, et.al. (other than the Borrower, Lender, or an "Associate" of the Lender as defined in 13 C.F.R., §120, or anyone standing in the same relationship to the Borrower). SBA, however, will only be obligated to purchase the Guaranteed Interest under Section II in the event of such assignment to the extent that such assignee has complied with all of the Registered Holder's obligations under this Agreement. The effective date of any transfer of the Guaranteed Interest shall be the date on which such transfer is registered on the books of FTA. Any payment or action by FTA or SBA to the transferor Registered Holder prior to the effective date of the transfer of the Guaranteed Interest shall be final and fully effective. Neither SBA nor FTA shall have any further obligation to the transferee Registered Holder with respect to such payment or action, and any adjustment between the transferor and transferee resulting from such payment or action by SBA or FTA shall be the responsibility and obligation solely of the transferor and transferee.

FTA will make payments on payment date to the person or entity that on the books of FTA is the Registered Holder as of the close of business on the Record date. The Record Date is the last business day of the prior month. Any other adjustment between transferee and transferor is their responsibility and obligation. At any given time, there shall only be one Registered Holder entitled to the benefits of ownership of the Guaranteed Interest. Upon transfer of the Guaranteed Interest, the transferor shall cease to have any right in the Guaranteed Interest or any obligation or commitment under this Agreement.

FTA shall serve as the central registry of Certificate ownership.

**9. Certificates Lost, Destroyed, Stolen, Mutilated or Defaced.** Procedures for claim resulting from loss, theft, destruction, mutilation or defacement of a Certificate are found in 13C.F.R. §120. Upon written request, FTA will provide such procedures to any claimant.

**10. Repurchase of Guaranteed Interest by Lender.**

- a. FTA will provide to each SBA Servicing Office on or before the last business day of the month a list of Loans which are in arrears based on criteria supplied to FTA by SBA.

Within five (5) business days of the receipt of the list, the SBA Servicing Office will contact Lender to determine the status of the Loan. A Loan requires action where (i) Lender's records indicate the interest paid-to-date is more than sixty (60) days in arrears or (ii) default by Borrower in payment of any installment of principal and interest has continued uncured for more than sixty (60) days. SBA will, in consultation with the Lender, decide on an appropriate remedial action under Paragraph 2 of this Agreement, or determine whether Lender will be offered the option to purchase the guaranteed portion. This Lender purchase option expires if the interest paid-to-date as reported by the FTA exceeds 120 days, at which point SBA will immediately notify the FTA of its intention to purchase the guaranty from the secondary market. Unless SBA identifies the loan having been in deferment status previously, the Lender will be responsible for all accrued interest owed beyond 120 days. SBA also reserves the right to offset guaranty proceeds paid against any excess interest amount due.

SBA will notify the FTA in writing of the action to be taken within five (5) business days of the decision.

Where the decision is for Lender to purchase the Guaranteed Interest, FTA, at its option, may request a transcript of account from Lender. Lender agrees to provide the transcript of account within ten (10) business days of receipt of the request from FTA. Lender's failure to comply with the request for transcript may result in a \$100 penalty payable to SBA.

FTA and Lender will reconcile the transcript of account within ten (10) business days of the receipt of the transcript by FTA. If Lender and FTA cannot agree on the balance and interest paid-to-date within such ten (10) business days, FTA will immediately send the Lender's and FTA's transcript to the SBA Servicing Office for reconciliation. The reconciliation by the SBA Servicing Office will be final. SBA will notify Lender and FTA of the reconciliation immediately.

Within ten (10) business days of the reconciliation of the account of a Loan that the Lender is to repurchase, the Lender will transmit and FTA will receive ten (10) business days advance written notice of the date of purchase. Within two (2) business days of

receipt of such notification, FTA will notify Registered Holder of the repurchase date and request Registered Holder to forward the Certificate to FTA.

On the date of purchase, Lender, without further notification from FTA, will forward by wire transfer a payment to FTA that includes the outstanding principal balance of the Guaranteed Interest plus interest through the date immediately preceding the date of the wire transfer.

- b. Upon receipt of the purchase amount from Lender (or from SBA pursuant to Paragraph 11 of this Agreement), FTA shall remit to Registered Holder within two (2) business days the outstanding principal balance of the Guaranteed Interest plus interest through the date immediately preceding the date of Lender purchase. FTA may deduct from such amount a final transfer charge for the final transfer and redemption of the Certificate. The amount of such final transfer charge will not exceed the normal transfer charge for Certificates.
- c. Upon repurchase of the Guaranteed Interest by Lender, the rights and obligations of Lender, FTA and SBA shall be governed by the 750 Agreement and any continuing provisions of this Agreement.

#### **11. Purchase by SBA.**

- a. Written notices will be given to Lender and FTA when SBA is to purchase the Guaranteed Interest. Within five (5) business days of such notice, Lender will provide a transcript and final statement of account of the Guaranteed Interest to FTA. Failure by Lender or FTA to provide the transcript may result in a \$100 penalty payable to SBA by the party failing to comply. FTA will reconcile the transcripts and the reconciliation will be final.

Within ten (10) business days of final reconciliation of the account, SBA will provide ten (10) business days advance written notice to FTA of the date of purchase. FTA, within two (2) business days of the receipt of the written notice, will notify Registered Holder of the repurchase date and request Registered Holder to forward the Certificate to FTA.

On the purchase date, SBA will arrange to have funds wired to FTA. Upon receipt of the purchase amount from SBA, FTA shall remit to Registered Holder, within two (2) business days, the outstanding principal plus accrued interest through the date immediately preceding the date of SBA purchase.

- b. SBA's payment of accrued interest to the payment date on a fixed interest rate Note shall be at the Note rate less the Lender's servicing fee. On Notes with a variable interest rate, SBA's payment of accrued interest shall be at that rate in effect on the date of the earliest uncured Borrower default, if the Loan is in default, or at the rate in effect at the time of purchase, less the Lender's fees if the Loan is not in default. This payment of accrued interest will be limited to accrued interest no more than 120 days from the interest paid to date used to compute the guarantee purchase amount.

- c. If Lender fails to furnish a current transcript statement as required by this paragraph and paragraph 13(a)(i) within ten business days after SBA's request therefor, then SBA may rely on the certified statement of account with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment in settlement will be made as expeditiously as possible.
- d. SBA shall not be liable for any amount attributable to any late payment charges pursuant to Paragraph 6 of this Agreement that may be due FTA or Registered Holder.
- e. Upon written demand by SBA, Lender shall immediately repay to SBA the amount by which the amount paid by SBA exceeds the amount of SBA's obligation to Lender under the 750 Agreement and SBA Loan Program Requirements, and the amount paid by SBA for any payments by Borrower which were not remitted by Lender to FTA, including accrued interest thereon, plus accrued interest at the Note interest rate computed on the unpaid balance of the Guaranteed Interest from the date of purchase by SBA to date of repayment by Lender.
- f. Upon purchase of the Guaranteed Interest by SBA pursuant to this Paragraph, the rights and obligations of Lender and SBA shall be governed by the 750 Agreement and SBA Loan Program Requirements and any continuing provisions of this Agreement. SBA shall be deemed a transferee of the Guaranteed Interest and the final Registered Holder thereof with all the rights and privileges of such Registered Holder under this Agreement.

**12. Default by Lender.**

- a. Pursuant to Paragraph 10(a) of this Agreement, FTA notifies the SBA Servicing Offices of Loans which are past due. SBA contacts the Lender to determine status of the Loans.
- b. When SBA determines that the Lender has failed for any reason to remit to FTA the payments required pursuant to Paragraph 6 of this Agreement, SBA may purchase the Guaranteed Interest under the provisions of Paragraph 11 of this Agreement, provided however, under no circumstances shall SBA be liable for any amount attributable to any late payment charge.
- c. If SBA purchases the Guaranteed Interest from Registered Holder because of default by Lender, and if Borrower has not been in uncured default on any payment due under the Note for more than sixty (60) calendar days, SBA shall have the option:
  - (i.) to require Lender to purchase the Guaranteed Interest from SBA for an amount equal to the amount paid by SBA to Registered Holder plus accrued interest (at the interest rate provided in the Note) from the date of the SBA purchase to the date of the Lender's repurchase, plus a penalty equal to twenty percent (20%) of the amount paid by SBA, or

- (ii.) to require Lender to pay SBA a penalty equal to twenty percent (20%) of the amount paid by SBA to Registered Holder.
- d. If on the date SBA purchases the Guaranteed Interest from Registered Holder pursuant to this Paragraph, and Borrower shall be in uncured default for more than sixty (60) calendar days, then the provisions of Paragraphs 11 (e) and 11 (f) of this Agreement will become applicable in lieu of subparagraph (c) of this paragraph.
- e. If Lender fails to furnish a current transcript statement as required by paragraph 13(a)(i) within ten business days after SBA's request therefor, then SBA may rely on the certified statement of account with supporting documentation from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment in settlement will be made as expeditiously as possible.

### **13. Other Obligations of the Lender.**

- a. Lender hereby consents to the purchase of the Guaranteed Interest by SBA in accordance with Paragraphs 11 and 12 of this Agreement. Lender shall, within ten business days of a request therefor, and without charge, furnish to SBA and FTA (i) a transcript of account, (ii) a current certified statement of the unpaid principal and interest then owed by Borrower on the Note, and (iii) a statement covering any payments by Borrower not remitted by Lender to FTA.
- b. Upon request by FTA at any time, Lender shall issue at no charge a certified statement of the outstanding principal amount of the Guaranteed Interest and the effective interest rate on the Note as of the date of such certified statement.
- c. Lender agrees that failure to provide the information requested pursuant to Paragraphs 10, 11, 12 and 13 of this Agreement may result in a \$100 penalty payable to SBA.
- d. Lender agrees that purchase of the Guaranteed Interest pursuant to Paragraphs 11 or 12 of this Agreement does not release or otherwise modify any of Lender's obligations to SBA arising from the Loan, the 750 Agreement or SBA Loan Program Requirements, and that such purchase by SBA does not waive any of SBA's rights against Lender.
- e. Lender agrees that SBA, as final owner of the Guaranteed Interest under this Agreement, in addition to all rights under the 750 Agreement and the SBA Loan Program Requirements, shall also have the right to offset against Lender all rights inuring to SBA under this Agreement against SBA's obligation to Lender under the 750 Agreement and the SBA Loan Program Requirements.
- f. Lender agrees to assign, transfer and deliver the Note and related loan documents to SBA upon written demand from SBA after purchase of the Guaranteed Interest pursuant to this Agreement.

**14. Default by Fiscal and Transfer Agent.**

- a. If FTA receives any payment from Lender or SBA and fails to remit to Registered Holder pursuant to Paragraph 7 of this Agreement, Registered Holder shall have the right to make written demand on FTA for any payment not remitted by FTA.
- b. If FTA fails to remit any such payment within ten (10) business days of such demand, Registered Holder shall have the right to make written demand on the SBA Servicing Office identified in this Agreement.
- c. Upon receipt of written demand from Registered Holder, SBA will verify non-payment by FTA. If non-payment by FTA is verified, SBA, within thirty (30) days of verification of non-payment by FTA, will (i) make payment directly to Registered Holder of the amount of the unremitted payment plus interest at the Certificate rate to day of payment by SBA, or (ii) purchase the Guaranteed Interest pursuant to Paragraph 11 of this Agreement.
- d. FTA shall repay SBA within ten (10) business days after receipt of written demand from SBA an amount equal to the unremitted amount plus interest computed at the interest rate on the Certificate on the unpaid balance of the Guaranteed Interest from the date of the failure of FTA to remit to the Registered Holder to the date of FTA's repayment to SBA. Such payment will not affect FTA's liability for a late payment charge under Paragraph 7 of this Agreement.

**15. Prepayment or Refinancing by Borrower.**

- a. A borrower may prepay a Loan guaranteed by SBA at any time without penalty. A prepayment subject to this Paragraph is any payment, which is greater than twenty percent (20%) of the principal amount outstanding at the time of prepayment.
- b. For Loans approved by SBA or on behalf of SBA prior to February 15, 1985, the Lender shall forward any prepayment amount pertaining to the Guaranteed Interest to the FTA within three (3) business days of receipt.
- c. For Loans approved by SBA or on behalf of SBA after February 14, 1985, Lender shall transmit written notice to FTA of Borrower's intent to make a partial or total prepayment of principal. Such prepayment can be by refinancing or otherwise. The prepayment date is the date prior to maturity that Lender has established with the FTA, and on which immediately available funds shall be delivered to FTA. The written notice shall be received by the FTA at least ten (10) business days prior to prepayment date, and it shall be Lender's responsibility to verify receipt of such notice by FTA. Lender's notice to FTA shall include:
  - (i.) The SBA loan number and borrower name
  - (ii.) The prepayment date

- (iii.) The principal amount being prepaid
- (iv.) The accrued interest due the FTA as of prepayment date (interest shall accrue through and including the calendar day immediately preceding the prepayment date)
- (v.) A certification by Lender that, to the best of its knowledge and belief, the prepayment funds are either Borrower's own funds or funds borrowed by Borrower (whether or not guaranteed by SBA) pursuant to a separate transaction
- (vi.) A certification from an officer of the Lender that the prepayment is in accordance with the terms of this Agreement, the Note and applicable law

The certifications are intended to guard against Lender's unilateral repurchase of the Guaranteed Interest from the Registered Holder without prior written consent of SBA.

Lender's failure to provide such timely certification may result in a \$100 penalty payable to SBA.

- d. On the prepayment date, Lender will wire the amount due to FTA without notification from FTA. If funds are not received by FTA on the prepayment date, Lender shall have thirty (30) calendar days from the date originally identified as the prepayment date to forward the prepayment funds. The funds will accrue interest through the day immediately prior to the date payment is received by FTA. If funds are not received within this thirty (30) day period, a new written notice is required in accordance with subparagraph (c) above.
- e. FTA shall, upon receipt of notice pursuant to subparagraph (c) of this Paragraph, advise the Lender in writing of any discrepancy between the prepayment information supplied by the Lender and the FTA's current records. Lender agrees to work with FTA to resolve errors or miscalculations that were made by the Lender or FTA during the course of the Loan and which are discovered subsequent to the prepayment.
- f. FTA will remit the prepayment amount to Registered Holder in accordance with Paragraph 7 of this Agreement.

**16. Option to Purchase by SBA.** SBA shall at any time have the option to purchase from the Registered Holder the outstanding balance of the Guaranteed Interest at the Note rate less the Lender's servicing fee. Failure of the Registered Holder to submit the Certificate to FTA for redemption on the date of prepayment specified by SBA or FTA will not entitle the Registered Holder to accrued interest beyond such date.

**17. Separate or Side Agreements.** Separate or side agreements (i) between Lender and Registered Holder, (ii) between a Registered Holder and a subsequent transferee of the Guaranteed Interest, (iii) between FTA and Lender, or (iv) between FTA and any Registered

Holder shall not in any way obligate SBA to make any payment except as provided in this Agreement, nor shall it modify the nature or extent of SBA's rights or obligations under the terms of this Agreement, the 750 Agreement or the SBA Loan Program Requirements. Any such side agreement, which has the effect of distorting the information supplied to SBA, is prohibited.

**18. Indemnity and Force Majeure.** Each party to this Agreement (including FTA) for itself and its successors and assigns, agrees to indemnify and hold harmless any other party (including FTA) from and against any costs, liabilities, and related expenses arising from the performance of its duties or otherwise arising under this Agreement; provided that no indemnification shall be provided under this Agreement for action or failure to act which constitutes negligence, breach of authority, or bad faith.

If any party hereto (including FTA) is in doubt as to the applicability of this Agreement to a communication it has received, it may refer the matter to SBA for an opinion as to whether it may take, suffer or omit any action pursuant to such communications.

Under no circumstances shall any party hereto (including FTA) be held liable to any person or entity for special or consequential damages or for attorneys' fees or expenses in connection with its performance under this Agreement.

If any party hereto (including FTA) shall be delayed in its performance hereunder or prevented entirely or in part from completing such performance due to causes or events beyond its control, such delay or non-performance shall be excused and the reasonable time for performance in connection with this Agreement shall be extended to include the period of such delay or non-performance. Causes or events include but are not limited to: (i) act of God; (ii) postal malfunction; (iii) interruption of power or other utility, transportation, or communication service; (iv) act of civil or military authority; (v) sabotage or act of terrorism; (vi) national emergency; (vii) war; (viii) explosion, flood, accident, earthquake or other catastrophe; (ix) fire; (x) strike or other labor problem; (xi) legal action; (xii) present or future law, government order, rule or regulation; or (xiii) shortage of suitable parts, materials, labor or transportation. In disputes between FTA and Lender, or between FTA and Registered Holder, SBA reserves the right to require FTA to take appropriate action as SBA determines, and if legal action is required, SBA will pay reasonable attorney's fees incurred by FTA in taking such action.

**19. Fees and Penalties.** Lender and Registered Holder shall be responsible for payment of fees and penalties required of them by this Agreement which are in effect on the Settlement Date, and as published from time to time in the Federal Register. If any fees or penalties required in this Agreement, (including but not limited to those described in Paragraphs 5, 6, 10, 11, 12, 13, and 15), are not remitted on a timely basis by Lender, FTA and SBA reserve the right to withhold such fees and penalties from the settlement of any future Guaranteed Interest sale or payment on any defaulted Lloan in the Lender's portfolio.

**20. Emergency Repurchase Authority by Lender.** In certain critical situations in which the Borrower's ability to remain in business is directly dependent on a change in the provisions relating to the installment payments by Borrower, SBA may permit Lender to repurchase the Guaranteed Interest from Registered Holder. Such permission, to be effective, must be in

writing. Lender must submit to the SBA servicing office a written request, which includes the following:

- (i.) Current financial statements of the Borrower,
- (ii.) A written decline from Registered Holder to a specific request for a change in the terms and conditions of the payment, or a written statement from FTA that no response was received from Registered Holder or the Guaranteed Interest is part of a Pool,
- (iii.) A statement that the proposed change in the terms and conditions of the Loan is solely for the benefit of Borrower, and
- (iv.) A certification by Lender that it will make the requested change in the terms and conditions if repurchase is approved by SBA.

The SBA Servicing Office must review the financial statements of Borrower and any other appropriate information and conclude that (i) a situation exists that Borrower's business will probably fail if the change is not approved, and (ii) that it is probable that the business will survive and resume payment if the change is approved. If all conditions are met, the SBA Servicing Office may approve the purchase of the Guaranteed Interest by Lender.

Guaranteed Interests purchased pursuant to this Paragraph may not be resold unless the Borrower has made all payments as scheduled in the Note for a period of twelve (12) months.

**21. Inconsistent Provisions and Caption Headings.** Any inconsistency between this Agreement and the 750 Agreement shall be resolved in favor of this Agreement. Any inconsistency between this Agreement and Title 13, Code of Federal Regulations, shall be resolved in favor of Title 13. The provisions of the Secondary Market Regulations (13 C.F.R. §120) in effect on the Settlement Date, and as may be amended from time to time in the Federal Register, apply to this Agreement. The caption headings for the various Paragraphs herein are for case of reference only and are not to be deemed part of these Terms and Conditions.

Certification

By signing below, I hereby certify that I have authority to execute this agreement for the party on whose behalf I am signing, and that all representations made by such party are true and correct to the best of my knowledge. I further acknowledge that false statements made to the U.S. Small Business Administration can result in criminal prosecution under 18 U.S.C. 1001, 15 U.S.C. 645 and other provisions and imposition of civil money penalties under 31 U.S.C. 3729.

In consideration of the mutual promises herein contained, the parties agree to all the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this multi-page Agreement this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
(Registered Holder) U.S. SMALL BUSINESS ADMINISTRATION

By: \_\_\_\_\_ By: Administrator, \_\_\_\_\_

Title: \_\_\_\_\_ U.S. Small Business Administration

Date: \_\_\_\_\_

\_\_\_\_\_  
(Lender) Examined and Accepted by  
Fiscal and Transfer Agent

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

Title: \_\_\_\_\_ COLSON SERVICES CORP.  
2 Hanson Place, 7<sup>th</sup> Floor

Date: \_\_\_\_\_ Brooklyn, NY 11217

**NOTICE: THE GUARANTEE OF SBA RELATES TO THE UNPAID PRINCIPAL BALANCE OF THE GUARANTEED INTEREST AND THE INTEREST DUE THEREON. ANY PREMIUM PAID BY THE REGISTERED HOLDER FOR THE GUARANTEED INTEREST IS NOT COVERED BY SBA'S GUARANTEE AND IS SUBJECT TO LOSS IN THE EVENT OF PREPAYMENT OR DEFAULT.**

**This form is required to obtain a benefit.**

PLEASE NOTE: The estimated burden for completing this form is 1 hour per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3<sup>rd</sup> St., S.W., Washington D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0185 ). **PLEASE DO NOT SEND FORMS TO OMB.**

**ATTACHMENT 1a -- SBA FORM 1086  
SAMPLE CALCULATION  
LENDER'S AND INVESTOR'S SHARE OF A BORROWER'S PAYMENT**

Total Borrower Payment Received By Lender \$ 3,450.05

**Total Interest Payment Calculation**

Borrower's Balance	\$288,857.10
Multiplied by	
Borrower's Interest Rate	8.750%
Multiplied by	
Number of Paid Interest Days	31
Divided by	
Interest Calendar Basis	365
<b>Total Interest Payment</b>	<b>\$ 2,146.64</b>

**Investor's Share Interest Payment**

Borrower's Balance	\$288,857.10
Multiplied by	
Percentage of Loan Sold to Investor	75.000%
Multiplied by	
Interest Rate Sold	7.750%
Multiplied by	
Number of Paid Interest Days*	31
Divided by	
Interest Calendar Basis*	365
<b>Investor's Share of Interest Payment to be Remitted to FTA</b>	<b>\$1,425.98</b>

**Lender's Share of Interest Payment**

Borrower's Balance	\$288,857.10
Multiplied by	
Percentage of Loan Retained by Lender	25.000%
Multiplied by	
Borrower's Interest Rate	8.750%
Multiplied by	
Number of Paid Interest Days	31
Divided by	
Interest Calendar Basis	365
<b>Lender's Share of Interest Payment to be Retained by Lender</b>	<b>\$ 536.66</b>

**Lender's Servicing Fee**

Total Interest	\$ 2,146.64
Minus	
Investor's Interest	\$ 1,425.98
Minus	
Lender's Interest	\$ 536.66
<b>Lender's Servicing Fee to be Retained by Lender</b>	<b>\$ 184.00</b>

\*NOTE: Figures shown are for illustrative purposes only. This example utilizes an actual number of days in each month with a 365 days per year basis. This same procedure may also be utilized for a constant 30 days in each month with a 360 days per year basis.

**ATTACHMENT 1b -- SBA FORM 1086  
SAMPLE CALCULATION  
LENDER'S AND INVESTOR'S SHARE OF A BORROWER'S PAYMENT**

Total Borrower Payment Received By Lender \$3,450.05

**Total Principal Payment**

Borrower's Total Payment \$3,450.05

Minus

Total Interest \$2,146.64

**Total Principal Payment \$1,303.41**

**Investor's Share of Principal Payment**

Total Principal Payment \$1,303.41

Multiplied by

Percentage of Loan Sold to Investor 75.000%

**Investor's Share of Principal Payment to be Remitted to FTA \$ 977.56**

**Lender's Share of Principal Payment**

Total Principal Payment \$1,303.41

Minus

Investor's Principal Payment \$ 977.56

**Lender's Share of Principal Payment to be Retained by Lender \$ 325.85**

**Total to be Remitted to the FTA**

Investor's Share of Interest Payment \$1,425.98

Plus

Investor's Share of Principal Payment \$ 977.56

**Total to be Remitted to FTA \$2,403.54**

**Total to be Retained by the Lender**

Lender's Share of Interest Payment \$ 536.66

Plus

Lender's Share of Principal Payment \$ 325.85

Plus

Lender's Servicing Fee \$ 184.00

**Total to be Retained by Lender \$1,046.51**

**Payment Distribution Proof**

Borrower's Total Payment \$3,450.05

Minus

Total to be Remitted to the FTA \$2,403.54

Minus

Total to be Retained by Lender \$1,046.51

**Payment Distribution Proof \$ 0.00**

**ATTACHMENT 2 -- SBA FORM 1086**

**SBA SERVICING OFFICE CODES**

<u>Office Code</u>	<u>Name</u>	<u>City, State</u>
0350	SBA National Guaranty Purchase Center	Herndon, VA
0626	Commercial Loan Servicing Center	Little Rock, AR
0992	Commercial Loan Servicing Center	Fresno, CA

**ATTACHMENT 3a -- SBA FORM 1086**

**EXAMPLE OF A PENALTY CALCULATION  
FOR LATE LENDER REMITTANCE OF A BORROWER PAYMENT**

(See Paragraph 6 (c))

**Example 1**

Assume:

1. that a \$1,000 payment received by Lender as a regularly scheduled Borrower payment is received by the FTA on the tenth of the month (a business day) following receipt by Lender:
2. that the interest rate on the note less the Lender's servicing fee is 7.75%:
3. that interest is calculated on a 30/360 day basis

(a) The late penalty is the greater of \$100 or 5% of the payment amount. \$100.00  
subject to a \$5,000 maximum on the Lender's total monthly remittance.  
\$1,000 x 5% \$50. The penalty is \$100.

(b) A penalty equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee).

Unremitted amount	\$1,000.00
Multiplied by Note Rate minus Lender's servicing fee	7.75%
Multiplied by number of late days	5
Divided by interest calendar basis	<u>360</u>
	\$1.08

(c) A late penalty charge calculated at a rate of 12% per annum on the unremitted amount.

Unremitted amount	\$1,000
Multiplied by 12%	12.0%
Multiplied by number of late days	5
Divided by interest calendar basis	<u>360</u>
	\$1.67

**TOTAL PENALTY \$102.75**

**ATTACHMENT 3b -- SBA FORM 1086**

**EXAMPLE OF A PENALTY CALCULATION  
FOR LATE LENDER REMITTANCE OF A BORROWER PAYMENT**

(See Paragraph 6 (c))

**Example 2**

Assume:

1. that a \$5,145.96 payment received by lender as a regularly scheduled Borrower payment is received by the FTA on the fifteenth of the month (a business day) following receipt by the Lender;
2. that the interest rate on the note less the Lender's servicing fee is 7.75%;
3. that interest is calculated on an actual/365 day basis

(a) The late penalty is the greater of \$100 or 5% of the payment amount, subject to a \$5,000 maximum on the Lender's total monthly remittance.  $\$5,145.96 \times 5\% = \$257.30$ . The penalty is \$257.30. \$257.30

(b) A penalty equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee).

Unremitted amount	\$5,145.96
Multiplied by the Note rate minus Lender's servicing fee	7.75%
Multiplied by number of late days	10
Divided by interest calendar basis	<u>365</u>
	\$10.93

(c) A late penalty charge calculated at a rate of 12% per annum on the unremitted amount.

Unremitted amount	\$5,145.96
Multiplied by 12%	12.0%
Multiplied by number of late days	10
Divided by interest calendar basis	<u>365</u>
	\$16.92

**TOTAL PENALTY \$285.15**

**PURCHASER CONFIRMATION OF SALE**

**LOAN INFORMATION:**

SBA Loan Number: «sba loan number»

Settlement Date «settlement date»

Borrower Name: «name of borrower»

B/D Transaction Number N/A

Note Date: «date of note»

Maturity Date «maturity date»

**NOTIFICATION INFORMATION:**

Lender/Seller Contact Name: «bank name, city»/«lender name, title»

Lender/Seller Telephone Number: 406-«lender phone number»

Purchaser Contact Name, Montana Board of Investments: Doug Hill, Director of In-State Loan Programs

Purchaser Telephone Number: 406-444-1217

**SETTLEMENT CALCULATIONS:**

Guaranteed Amount Purchased \$«dollar amount»

Price \$«dollar amount»/100%

Accrued Interest: \$ -None-

From N/A

To N/A

Total Settlement Amount \$«dollar amount»

**RATE INFORMATION:**

\*Net Interim Rate (variable-rate loan): N/A

Until (first floor date): N/A

Net Interest Rate «BOI rate less .125»%

Cap: N/A

Floor: N/A

Originators Fee (if any) None

Accrual Basis: Actual/365

**TOTAL PAYMENT TO LENDER AND DIFFERENCE TO SBA (if applicable)**

Please accept funds in the amount of \$«dollar amount»

From: Montana Board of Investments

For Credit To: SBA Settlement Account No. 1825151

**WIRE INSTRUCTIONS:**

Lender Amount: \$«dollar amount»

Difference \$ None

To: «bank name»

To: \_\_\_\_\_ N/A

ABA #: «lenders ABA #»

ABA #: \_\_\_\_\_ N/A

Third Party Name: \_\_\_\_\_ N/A

Third Party Name: \_\_\_\_\_ N/A

Third Party Account #: \_\_\_\_\_ N/A

Third Party Account #: \_\_\_\_\_ N/A

Reference: \_\_\_\_\_ N/A

Reference: \_\_\_\_\_ N/A

**FUNDS RECEIVED BY 1 P.M. (EST) ARE WIRED TO LENDERS SAME DAY**

Issuance of Certificate: (For certificates to be via Fed. Express, please enclose a chargeable Fed. Express account number)

Please issue certificate in the name of (Registered Holder): Montana Board of Investments

Please send certificate to: Attn: Doug Hill, Director of In-State Loan Programs, P.O. Box 200126, Helena, MT 59620-0126.

Investor's Tax ID Number: 81-0466697

\_\_\_\_\_  
Signature on behalf of the Purchaser

\_\_\_\_\_  
Date

The following section is to be completed by Colson Services Corp., only

\_\_\_\_\_  
Instructions Verified by (Contact Name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time

\_\_\_\_\_  
Initialed By