

USDA-RD  
Form RD 449-35  
(Rev. 7-99)

FORM APPROVED  
OMB No. 0575-0137

**LENDER'S AGREEMENT**

Type of Loan: \_\_\_\_\_  
Applicable 7 CFR part 1980, subparts A and I

USDA Loan Ident. No.  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Lender) of  
\_\_\_\_\_ has made a loan to  
\_\_\_\_\_ (Borrower)  
\_\_\_\_\_ in the principal  
amount of \$ \_\_\_\_\_ as evidenced by \_\_\_\_\_ note  
(include Bond as appropriate) described as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The United States of America, acting through Rural Housing Service or any successor agency, the United States Department of Agriculture (USDA) (herein referred to as "Government") has entered into a "Loan Note Guarantee" (Form RD 449-34) or has issued a "Conditional Commitment for Guarantee" (Form RD 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan.

The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan, the Lender enters into this agreement.

**THE PARTIES AGREE:**

**I.** The maximum loss covered under the Loan Note Guarantee will not exceed \_\_\_\_\_ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

**II. Full Faith and Credit.** The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Government acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by the Government in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

*According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0137. The time required to complete this information collection is estimated to average 1 1/2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

### **III. Lender's Sale or Assignment of Guaranteed Loan.**

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portion of the loan to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at, or, subsequent to, loan closing, such loan must not be in default under the terms of the note. The Lender may proceed under the following options:

1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form RD 449-36, "Assignment Guarantee Agreement." Any Holder, upon written notice to Lender and Government, may reassign the unpaid unguaranteed portion of the loan sold. Upon such notification, the assignee shall succeed to all rights and obligations of the Holder. If this option is selected, the Lender may not cause to be issued any additional notes.

2. Multi-Note System. When the Lender, selects this option, the Lender will transfer to the Holder one of the Borrower's executed notes and Loan Note Guarantee attached to the Borrower's note. However, all rights under the security instruments will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding and contrary provisions of state law.

a. At Loan Closing: Provide for no more than 10 notes, unless the Borrower and the Government agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, the Government will provide the Lender with a Loan Note Guarantee for each of the notes.

b. After Loan Closing:

(1) Upon written approval by the Government, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) The Government will not bear any expenses for reissue of notes.

(e) There is adequate collateral securing the notes.

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) The Government will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by the Government.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 5% for Community Program loans of the total guaranteed loans amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder, the Holder shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the Government program regulations, and to future Government program regulations not inconsistent with the express provisions hereof.

C. The Holder upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

**IV.** The Lender agrees loan funds will be used for the purposes authorized in program regulations and in accordance with the terms of the conditional commitment.

**V.** The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

**VI.** The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

**VII.** Lender certifies that a loan agreement or loan instruments concurred in by the Government has been or will be signed with the Borrower.

**VIII.** Lender certifies that it has paid the required guarantee fee.

### **IX. Servicing.**

A. The Lender will service the entire loan and will remain mortgagee or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of the Government. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that the Government's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing the Government and the Borrower of any violations. None of the aforesaid instruments will be altered without the Government's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holders of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or written down only with agreement of the Lender and Holders of the guaranteed portion of the loan and only with the Government's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party and Fidelity Bond coverage if required.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of the Government; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to \$ \_\_\_\_\_ without written concurrence of the Government; the Borrower complies with all laws and ordinances applicable to the loan, the collateral or facility.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to the Government at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by the Government, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by the Government.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with the Government regulations.

10. Providing the Government with loan status reports semiannually as of June 30 and December 31 on the appropriate Government form.

11. Obtaining from the Borrower periodic financial statements under the following schedule:

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Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the Government office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G.

**X. Default.**

A. The Lender will notify the Government when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify the Government of the status of a Borrower's default on the appropriate Government form. A meeting will be arranged by the Lender with the Borrower and the Government to resolve the problem. Actions taken by the Lender with written concurrence of the Government will include, but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder).

4. Transfer and assumption of the loan.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with the Government Lender, and the Holders approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder within 30 days of written demand by the Holder when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder will concurrently send a copy of demand to the Government. The Lender will accept an assignment without recourse from the Holder upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder and the Government of its decision.

D. If Lender does not repurchase as provided by paragraph C, the Government will purchase from Holder the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of the Government's purchase, within 30 days after written demand to the Government from the Holder. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of original demand letter of the Holder to the Lender requesting the re-purchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder or its duly authorized agent will also include evidence of its right to require payment from the Government. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to the Government or the original of the Assignment Guarantee Agreement properly assigned to the Government without recourse including all rights, title, and interest in the loan. The Government will be subrogated to all rights of Holder. The Holder will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by the Government, such proposed payment will not be later than 30 days from the date of the demand.

The Government office serving the Borrower will promptly notify the Lender of the Holder's demand for payment. The Lender will promptly provide the Government office servicing the Borrower with the information necessary for the Government's determination of the appropriate amount due the Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the Lender must be resolved before payment will be approved. The Government will notify both parties who must resolve the conflict before payment by the Government will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the Government office servicing the Borrower will review the demand and submit it to the State Director for verification and remission of the check to the Holder.

E. Lender consents to the purchase by the Government and agrees to furnish on request by the Government a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed on the loan and the amount due the Holders. Lender agrees that any purchase by the Government does not change, alter or modify any of the Lender's obligations to the Government arising from the loan or guarantee, nor does such purchase waive any of the Government's rights against Lender and the Government will have the right to set-off against Lender all rights inuring to Government from the Holder against the Government's obligation to Lender under the Loan Note Guarantee. To the extent the Government holds a portion of a loan, will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When the Government purchases from a Holder, the Government will pay the Holder only the amounts due the Holder, the Government will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged the Government, and no such fee is collectible from the Government.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

**XI. Liquidation.** If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with the Government. When the Government concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The lender will liquidate the loan unless the Government, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holders the guaranteed portion of the loan. The Holder will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, the Government will be notified immediately in writing, the Government will then purchase the guaranteed portion of the loan from the Holder. If the Government holds any of the guaranteed portion, the Government will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise the Government in writing of its proposed detailed method of liquidation called a liquidation plan and will provide the Government with:

1. Such proof as the Government requires to establish the Lender's ownership of the guaranteed loan promissory notes and related security instruments.
2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.
3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal loan balance including accrued interest is less than \$200,000 the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On loan balances in excess of \$200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and the Government to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by the Government and the Lender.

B. The Government's response to Lender's liquidation plan. The Government will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If the Government needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should the Government and the Lender not agree on the Lender's liquidation plan, negotiations will take place between the Government and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should the Government opt to conduct the liquidation, the Government will proceed as follows:

1. The Lender will transfer to the Government all rights and interest necessary to allow the Government to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by the Government.

2. The Government will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to the Government include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or the Government, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to the Government or the Lender, as the case may be.

D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide the Government with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to the Government any payments received from the Borrower and pro rata share of liquidation or other proceeds, etc. when the Government is the holder of a portion of the guaranteed loan using the appropriate Government form. When the Government liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. The Government will have the right to recover losses paid under the guarantee from any party liable.

1. The appropriate Government form, will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by the Government after the Lender has submitted a liquidation plan approved by the Government. Payments will be made in accordance with applicable Government regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to the Government an estimate of loss that will occur in connection with liquidation of the loan. The Government will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on the appropriate Government form, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by the Government, and within 30 days thereafter, the Government will send the original Report of Loss estimate for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on the appropriate Government form by the Lender to the Government.

3. After the Lender has completed liquidation, the Government upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If the Government has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist the Government in making the investigation. If the Government finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When the Government finds the final Report of Loss to be proper in all respects, it will be tentatively approved.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, the Government will send the additional amount owed by the Government to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse the Government for the overpayment plus interest at the note rate from date of payment.

5. If the Government has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by the Government when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by the Government to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If the Government conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date the Government accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by the Government.

G. Application of the Government loss Payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Government will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final RD Report of Loss prepared and submitted by the Lender must be processed by the Government in order to close out the files.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation cost will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with the Government written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure the Government's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join the foreclosure action or, in lieu of foreclosure, to take a deed of conveyance. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by the Government within 60 days after the review of the accounting of the collateral.

#### **XII. Protective Advances.**

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). The Government written authorization is required on all protective advances that exceed a total cumulative advance amount of \$5000 to the same borrower. Protective advances include, but are not limited to advances made for taxes annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

#### **XIII. Additional Loans or Advances.**

The Lender will not make additional expenditures or new loans without first obtaining the written approval of the Government even though such expenditures or loans will not be guaranteed.

#### **XIV. Future Recovery.**

After a loan has been liquidated and a final loss has been paid by the Government, any future funds which may be recovered by the Lender, will be pro-rated between the Government and the Lender. The government will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

#### **XV. Transfer and Assumption Cases.**

Refer to 7 CFR part 1980 subpart I.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantee) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss to recover its pro rata share of the actual loss at that time. In completing the Report of Loss, the amount of the debt assumed will be entered as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transfer, also will be entered.

#### **XVI. Bankruptcy.**

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under Chapters 9, 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a Chapter 7 bankruptcy or liquidation plan in a chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

##### **B. Loss Payments.**

###### **1. Estimate Loss Payments.**

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Government, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing the Government with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use the appropriate Government form, to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim, as well as any revisions to this claim, will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the Lender will complete the appropriate Government form, and forward it to the Government.

###### **2. Interest Loss Payments.**

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. The Report of Loss form will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. Final Loss Payments.

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Government will close out the estimated loss account at the time notification of payment in full is received.

4. Payment Application. The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the Government's servicing office.

5. Overpayments. Upon completion of the reorganization plan, the Lender will provide the Government with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by the Government to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse the Government for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. Protective Advances. If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on the Report of Loss form.

**XVII. Debt Write-down.**

The maximum amount of loss payment associated with a loan which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan before the write-down and the outstanding balance of the loan after the write-down. The Lender will use the appropriate Government form to request an estimated loss payment to receive its pro-rata share of any loss sustained.

**XVIII. Other Requirements.**

This agreement is subject to all the requirements of the applicable subpart of Title 7 CFR part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future Government regulations not inconsistent with this agreement.

**XIX. Execution of Agreements.**

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon the Government with respect to the execution of such contract. The Government in no way warrants that such a contract has been or will be executed.

**XX. Notices.**

All notices and actions will be initiated through the Government for \_\_\_\_\_

(State) with mailing address at the date of this instrument \_\_\_\_\_

**XXI. Environmental Requirements.**

The Lender will ensure that the borrower complies with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**LENDER:**

ATTEST: \_\_\_\_\_ (SEAL)

By \_\_\_\_\_

Title \_\_\_\_\_

**UNITED STATES OF AMERICA**

Agency \_\_\_\_\_ or its Successor

By \_\_\_\_\_

Title \_\_\_\_\_