

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

UNCONDITIONAL GUARANTEE
BUSINESS AND INDUSTRY GUARANTEED LOAN PROGRAM
AND
THE RURAL ENERGY FOR AMERICA PROGRAM

Agency Loan #	
Agency Loan Name	
Borrower	
Guarantor	
Guarantor Tax ID#	
Lender	
Date	
Note Amount	

1. GUARANTEE

Guarantor unconditionally guarantees payment to Lender of _____ % of all amounts owing under the Note including any costs. Due under the Note when Lender makes written demand upon Guarantor. Lender is not required to seek payment from any other source before demanding payment from Guarantor.

2. NOTE

The "Note" is the promissory note dated _____ in the principal amount of _____ Dollars, from Borrower to Lender. It includes all notes, including notes issued under the multi-note system, and any assumptions, renewal, substitution, or replacement of the notes.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not 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 0570-0017 and 0570-0050. The time required to complete this information collection is estimated to average 30 minutes 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.

3. DEFINITIONS

“Collateral” means any property taken as security for payment of the Note or any guarantee of the Note.

“Guarantor” also includes single and multiple Guarantors who sign this Guarantee.

“Loan” means the loan evidenced by the Note.

“Loan Documents” means the documents related to the Loan signed by Borrower, Guarantor, or any other guarantor, or anyone who pledges Collateral.

“Agency” means Rural Business Cooperative Service an Agency of the United States Department of Agriculture, Rural Development.

4. LENDER’S GENERAL POWERS

With prior written consent from the Agency, Lender may take any of the following actions at any time, without notice to the Guarantor, without Guarantor’s consent and without making demand upon Guarantor.

- A. Modify the terms of the Note or any other Loan Document except to increase the amounts due under the Note;
- B. Refrain from taking any action on the Note, the collateral, or any guarantee;
- C. Compromise or settle with the Borrower or any guarantor of the Note;
- D. Release any Borrower or any guarantor of the Note;
- E. Substitute or release any of the Collateral, whether or not Lender receives anything in return;
- F. Foreclose upon or otherwise obtain, and dispose of, any Collateral at public or private sale, with or without advertisement;
- G. Bid or buy at any sale of Collateral by Lender or any other lien holder, at any price Lender chooses; and
- H. Exercise any rights it has, including those in the Note and other Loan Documents.

These actions will not release or reduce the obligations of Guarantor or create any rights or claims against Lender.

5. FEDERAL LAW

When the Agency is the holder, the Note and this Guarantee will be construed and enforced under Federal law, including Agency regulations. Lender or Agency may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens,

and other purposes. By using such procedures, the Agency does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Guarantee, Guarantor may not claim or assert any local or state law against the Agency to deny any obligation, defeat any claim of the Agency, or preempt federal law.

6. RIGHTS, NOTICES, AND DEFENSES THAT GUARANTOR WAIVES

To the extent permitted by law,

A. Guarantor waives all rights to:

- 1) Require presentment, protest, or demand upon Borrower;
- 2) Redeem any Collateral before or after Lender disposes of it;
- 3) Have any disposition of Collateral advertised; and
- 4) Require a valuation of Collateral before or after Lender disposes of it.

B. Guarantor waives any notice of:

- 1) Any default under the Note;
- 2) Presentment, dishonor, protest, or demand;
- 3) Execution of the Note;
- 4) Any action or inaction on the Note or Collateral, such as disbursements, payment, nonpayment, acceleration, intent to accelerate, assignment, collection activity, and incurring enforcement expenses;
- 5) Any change in the financial condition or business operations of Borrower or any guarantor;
- 6) Any changes in the terms of the Note or other Loan Documents, except increases in the amounts due under the Note; and
- 7) The time or place of any sale or other disposition of Collateral.

C. Guarantor waives defenses based upon any claim that:

- 1) Lender failed to obtain any guarantee;
- 2) Lender failed to obtain, perfect, or maintain a security interest in any property offered or taken as Collateral;
- 3) Lender or others improperly valued or inspected the Collateral;
- 4) The Collateral changed in value, or was neglected, lost, destroyed or underinsured;
- 5) Lender impaired the Collateral;
- 6) Lender did not dispose of any of the Collateral;
- 7) Lender did not conduct a commercially reasonable sale;
- 8) Lender did not obtain the fair market value of the Collateral;
- 9) Lender did not make or perfect a claim upon the death or disability of Borrower or any guarantor of the Note;
- 10) Lender made errors or omissions in Loan Documents or administration of the Loan;
- 11) The financial condition of Borrower or any guarantor was overstated or has adversely changed;

- 12) Lender did not seek payment from the Borrower, any other guarantors, or any Collateral before demanding payment from Guarantor;
- 13) Lender impaired Guarantor's suretyship rights;
- 14) Lender modified the Note terms, other than to increase amounts due under the Note. If Lender modifies the Note to increase the amounts due under the Note without Guarantor's consent, Guarantor will not be liable for the increased amounts and related interest and expenses, but remains liable for all other amounts;
- 15) Borrower has avoided liability on the Note; or
- 16) Lender has taken an action allowed under the Note, this Guarantee, or other Loan Documents.

7. DUTIES AS TO COLLATERAL

Guarantor will preserve the Collateral pledged by Guarantor to secure this Guarantee. Lender has no duty to preserve or dispose of any Collateral.

8. SUCCESSORS AND ASSIGNS

Under this Guarantee, Guarantor includes heirs and successors, and Lender includes its successors and assigns.

9. GENERAL PROVISIONS

- A. **ENFORCEMENT EXPENSES.** Guarantor promises to pay all expenses Lender incurs to enforce this Guarantee, including, but not limited to, attorney's fees and costs.
- B. **AGENCY NOT A CO-GUARANTOR.** Guarantor's liability will continue even if the Agency pays Lender. The Agency is not a co-guarantor with Guarantor. Guarantor has no right of contribution from the Agency.
- C. **SUBROGATION RIGHTS.** Guarantor has no subrogation rights as to the Note or the Collateral until the Note is paid in full.
- D. **JOINT AND SEVERAL LIABILITY.** All individuals and entities signing as Guarantor are jointly and severally liable.
- E. **DOCUMENT SIGNING.** Guarantor must sign all documents necessary at any time to comply with the Loan Documents and to enable Lender to acquire, perfect, or maintain Lender's liens on Collateral.
- F. **FINANCIAL STATEMENTS.** Guarantor must give Lender financial statements or other information requested by the Lender. Failure by the Guarantor to submit the requested information can result in the Lender taking appropriate action consistent with applicable law.
- G. **LENDER'S RIGHTS CUMULATIVE, NOT WAIVED.** Lender may exercise any of its rights separately or together, as many times as it chooses. Lender may delay or forego enforcing any of its rights without losing or impairing any of them.

- H. ORAL STATEMENTS NOT BINDING. Guarantor may not use an oral statement to contradict or alter the written terms of the Note or this Guarantee, or to raise a defense to this Guarantee.
- I. SEVERABILITY. If any part of this Guarantee is found to be unenforceable, all other parts will remain in effect.
- J. CONSIDERATION. The consideration for this Guarantee is the Loan or any accommodation by Lender as to the Loan.

10. GUARANTOR ACKNOWLEDGMENT OF TERMS

Guarantor acknowledges that Guarantor has read and understands the significance of all terms of the Note and this Guarantee, including all waivers.

11. GUARANTOR ACKNOWLEDGEMENT OF FEDERAL DEBT

Guarantor acknowledges and agrees that any loss claim paid by the Agency on the Note shall be a Federal Debt owed by Guarantor up to the amount in paragraph 1. Guarantor agrees to immediately reimburse the Agency for the loss claim. The Agency may use all remedies available to it, including those under the Debt Collection Improvement Act, to recover the Federal Debt from the Guarantor. The Agency's right to collect from the Guarantor is independent of the Lender's rights to collect under the Note and will not be affected by any release by the Lender. Any Agency collection under this paragraph does not need to be shared with the Lender.

12. SIGNATURE(S)

By signing below, each individual or entity becomes obligated as Guarantor under this Guarantee.

INSTRUCTIONS FOR PREPARATION

This form is used for an unconditional guarantee, as described in RD Instruction 4279-B, § 4279.149.

APPLICABLE TO BOTH PERSONAL AND CORPORATE GUARANTEES

- A. No Alterations. You may not alter the text or make any additions except to insert information required to complete the form.
- B. Insertions. Complete the form and the terms in accordance with the Authorization.
- C. Information Grid. All applicable information is on page 1 of the form. Most of the information will come from the Authorization. The information must be consistent in all documents—Authorization, Notes, and Guarantees.

Agency Loan Number. Copy from the Authorization.

Agency Loan Name. This must be the same as in the Authorization.

The Agency Loan Name is the **first available** name from the following list:

- a. The doing business as (dba) name (trade name) of the Operating Company
- b. The actual (legal) name of the Operating Company
- c. The “dba” name (trade name) of the Borrower
- d. The actual (legal) name of the Borrower

If there is more than one Borrower or Operating Company, use the first Borrower or Operating Company listed in the Authorization and apply the above rules.

Borrower. Insert the names of all Borrowers. **DO NOT INCLUDE DBAs here**. All Borrower names on page 1 of the form must be the same as in the Note.

Guarantor. Insert the legal names of individuals or entities who will be Guarantors on this guarantee. **DO NOT INCLUDE DBAs here**. All Guarantor names listed on page 1 of the form must be the same as in the signature block.

Guarantor Tax ID No. Insert Guarantor’s tax identification number.

Lender. For B&I guaranteed loans, insert the name of the Lender.

Date. Insert the date the Guarantee is signed.

Note Amount. Insert, in numbers only, the principal amount of the loan.

Item 2. NOTE. Complete the requested information, date of promissory note, and the principal amount of the note. The Note amount here must be the same as the Note Amount on page 1 of the form.

Item 12. SIGNATURE. A signature section must be created, and must be in accordance with applicable laws. The signature block must include the legal name of the individual or entity signing the Guarantee and, where applicable, the name and title of the authorized representative who will execute the document on its behalf. For instructions on how to complete an enforceable signature block that complies with applicable state laws, consult with the Regional Attorney.