



OMB NO.: 3245-0185  
 EXPIRATION DATE: XX-XX-2023  
 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. INFORMATION COLLECTED BY THIS FORM IS USED TO RECORD THE SALE OF THE GUARANTEED PORTION OF AN SBA LOAN. THE INFORMATION IS REQUIRED TO COMPLY WITH SBA LOAN PROGRAM REQUIREMENTS AND PROGRAM PARTICIPATION. THE LENDER AND REGISTERED HOLDER COMPLETE THE FORM AND SUBMIT IT TO THE OFFICES OF THE FISCAL AND TRANSFER AGENT (FTA).

### ARTICLE I. SALE OF THE GUARANTEED INTEREST

Section 1.1. 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 herein 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 1.2. The Lender certifies the following as of the date of the Lender's signature:

#### LENDER / BORROWER INFORMATION

	LENDER	BORROWER
Address		
City, State, Zip Code		

Lender Contact:	
Lender Telephone:	
Lender Email:	
Date of 750 Agreement:	

**LOAN INFORMATION**

Date of Note (MM/DD/YYYY)	
SBA Loan Authorization Date (SBA Form 529)	
Percent of SBA Guaranty (%)	
Date SBA Guaranty Fee was Paid (MM/DD/YYYY)	
Date of <b>INITIAL</b> Disbursement (MM/DD/YYYY)	
Date of <b>FINAL</b> Disbursement (MM/DD/YYYY)	
Original Face Amount (\$)	
Outstanding Principal Amount of Loan (\$)	
Outstanding Principal Amount of Guaranteed Interest (Par Value) (\$)	
Guaranteed Portion (F=Fixed, or V=Variable)	
Unguaranteed Portion (F=Fixed, or V=Variable)	

If Guaranteed Portion is Variable: \_\_\_\_\_ BASE RATE \_\_\_\_\_

	PRIME	SBA Peg RATE	LIBOR
Guaranteed Portion			
Unguaranteed Portion			

Interest Accrual Method (1 = 30/360; 2 = Actual/365) \_\_\_\_\_

**SALE & FEE INFORMATION**

Price Paid by Purchaser (\$)	
Price Paid as a % of Par Value of Guaranty Interest (%)	
SBA Annual Service Fee (%)	
Lender Servicing Fee (%)	
FTA Fee (%)	
SBA Program User Fee – If price in excess of 110 percent of the outstanding principal amount of the guaranteed portion of the Loan	See Section 1.7 below

**REGISTERED HOLDER INFORMATION**

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State Zip Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

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.

Section 1.3. 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)

- (a) 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.
- (b) 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.

Section 1.4. Annual Service Fee. SBA shall retain an annual service fee based on a percentage the guaranteed principal outstanding as listed above. This fee will be collected by the FTA from all payments received from the Lender and will be transmitted to SBA on a regular basis, no less frequently than monthly. This fee will be used to defray program expenses and is subject to change from time to time.

Section 1.5. Lender Servicing Fee. 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.

(a) 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 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 \_\_\_\_\_

Section 1.6. FTA Fee. This fee is for services performed in processing Lender remittances, investor payments, and Individual Certificate administration. This fee is established annually by the FTA and is published by SBA from time to time.

Section 1.7. SBA Program User Fee. 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 outstanding principal amount of the guaranteed portion of the loan. Such fee shall be collected by the FTA and shall be remitted by FTA to SBA on a regular basis, pursuant to FTA's contract with SBA. SBA will not refund such program user fee under any circumstances.

Section 1.8. Certificate Issuance. Registered Holder requests that SBA issue through the FTA a Guaranteed Interest Certificate ("Certificate") evidencing ownership of the Guaranteed Interest in the name of the Registered Holder (such person or entity, or any subsequent transferee, during its respective period of ownership of the Certificate to be called the "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: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

SBA Servicing Office Code: (see below) \_\_\_\_\_

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

Section 1.9. CASH FLOW YIELD based on Constant Prepayment Rate. 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%.

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

Constant Prepayment Rate Assumption: \_\_\_\_\_ % per annum

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

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

Rate Type	Mortgage Equivalent Yield	Bond Equivalent Yield
Fixed Rate %		
Variable Rate %		
Base (Check One):	PRIME <input type="checkbox"/> LIBOR <input type="checkbox"/> SBA PEG RATE <input type="checkbox"/>	
Base Rate %		
Spread (+/-Based on Base Rate %)		

**ARTICLE II. REPRESENTATIONS, WARRANTIES, ACKNOWLEDGMENTS AND CERTIFICATIONS**

Section 2.1. Lender Certifications.

By signing below, the Lender certifies that:

- (a) To the best of its knowledge, the Lender 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;
- (b) The 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;
- (c) The Lender or its Associates will not share any premium received from this sale with a Service Provider, packager, or other loan referral source;
- (d) The loan is not a revolving loan or line of credit facility;

- (e) The Lender has paid the SBA guaranty fee;
- (f) The loan has been made and is fully disbursed to the Borrower;
- (g) The Lender has no authority to unilaterally repurchase the Guaranteed Interest from Registered Holder without the written consent of the SBA;
- (h) Lender acknowledges that the Loan cannot not be placed on non-accrual status until the Guaranteed Interest has been repurchased by Lender or SBA;
- (i) Lender 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;
- (j) The Lender acknowledges that SBA reserves the right to recover any outstanding Lender obligations owed 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;
- (k) The 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; and
- (l) The Lender is permitted to sell the Loan in the SBA Secondary Market unless restricted otherwise by SBA.

Section 2.2. Obligations and Acknowledgments of SBA.

- (a) The outstanding principal amount of the Guaranteed Interest and date to which interest is paid as certified by Lender is accepted by SBA;
- (b) The outstanding principal amount 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;
- (c) 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; and
- (d) Neither execution of this Agreement by SBA, nor purchase of the Guaranteed Interest 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.

### Section 2.3. Registered Holder Representations and Warranties.

By signing below, 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 represents and warrants that:

- (a) The Registered Holder 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. §120.10);
- (b) Registered Holder 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;
- (c) 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 section. 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;
- (d) If the 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;
- (e) 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; and
- (f) Registered Holder will not service or attempt to service the Loan, or secure or attempt to secure additional collateral from Borrower.

### **ARTICLE III. LENDER PAYMENT REMITTANCES AND LOAN REPORTING**

Section 3.1 Borrower Payment. Lender shall send to the 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 the FTA will be the Lender's notification that the sale is complete.

Section 3.2 Scheduled Payment Amounts. FTA must receive from Lender by the third calendar day of

every month or the next business day thereafter if the third calendar day of the month 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. 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 per reporting unit). This late payment penalty will be paid through FTA along with the late payment penalty identified in Section 3.5 of this Agreement.

Section 3.3 Payments Other Than Scheduled Payment Amounts. With the exception of prepayments pursuant to Article VII of this Agreement, borrower 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 Section 3.9 below.

Section 3.4. Lender Fees. 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 Article 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, SBA Rules and Regulations and SBA Standard Operating Procedures.

Section 3.5. Late Payments and Penalties. As stated in Sections 3.2 and 3.5 of this Article, Lender remittance of the SBA 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 Section 3.5 of this Article 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 a late payment penalty to SBA (collected by FTA), which is **the greater of:**

- (a) \$100; or
- (b) five percent (5%) of the unremitted amount subject to a \$5,000 per month per reporting unit limit for the penalty.

If this penalty fee is not included in the Lender remittance, FTA, on behalf of SBA, shall levy such late payment penalty 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 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 forward the fees due SBA on a regular basis, no less frequently than monthly, pursuant to FTA's contract with SBA.

Section 3.6 Demand Deposit Account. Lender agrees to deposit the pro rata share of Borrower's payment due to the FTA in a segregated demand deposit account held by the Lender and titled as follows: "[insert legal name of Lender], FBO Guidehouse LLP as FTA, in trust for the



individual security beneficiaries.” The demand deposit account shall not refer to any party other than the Lender, FTA, and the individual security beneficiaries (as applicable).

Section 3.7. Limit on SBA Payment of Interest on Guarantee Purchases. For defaulted Loans in which the SBA has purchased the Guaranteed Interest and the Registered Holder has been paid in full, 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.

Section 3.8. 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).

(a) 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.

(b) 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.

(c) 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.

(d) Lender shall not authorize any additional deferment, or any extension of Loan maturity without the prior written consent of the Registered Holder.

(e) No change in terms and conditions of repayment of the Note other than the deferment authorized in this Section 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 ten (10) business days of the date of the request from FTA. Lack of response will be construed by Lender and FTA as non-consent, and appropriate action under Sections 6.1, 6.2 and 8.4 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.

Section 3.9. Lender Loan Reporting. By the FTA Due Date defined in Section 3.2 above, the Lender shall

provide the following information on the Guaranty Loan Status and Lender Remittance Form (SBA Form 1502) 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. Loan data to be reported will include, but not be limited to:

1. SBA GP Number: the SBA Loan Number;
2. Next Installment Due Date: the date the Borrower is scheduled to make its next payment;
3. Interest Rate: the rate of interest (or rates if the interest rate on a variable rate loan changed during the payment period) used to calculate the interest payment due the FTA (i.e., the Borrower's note rate less the Lender's servicing fee percentage);
4. Guaranteed Portion Interest: the guaranteed portion of the Borrower's interest payment received less the Lender's servicing fee;
5. Guaranteed Portion Principal: the guaranteed portion of the Borrower's principal payment received;
6. Total to FTA: the sum of the guaranteed portion interest plus guaranteed portion principal for the particular Loan;
7. Interest Period From and To: the time period covered by the interest rate and guaranteed portion interest in Items 3 and 4;
8. Number of Days: the number of days covered by the reported interest payment and period, determined in accordance with the calendar basis used to compute interest;
9. Calendar Basis: the interest computation calendar method stated at the time of the original Loan sale into the secondary market or as approved by the Registered Holder through a servicing action submitted by the Lender to the FTA. Acceptable computation methods for secondary market loans are 30/360 and Actual days/365;
10. Guaranteed Portion Closing Balance: the guaranteed portion of the balance remaining after applying the Borrower's most recent principal payment;
11. Remittance Penalty: late payment penalty pursuant to Section 3.5 of this Agreement or SBA's Subsidy Recoupment Fee; and
12. Grand Total: sum of the totals for Items 6 and 11. Equals the amount of the wire remitted to the FTA.

Section 3.10. Reconciliation of Reported Loan Data. 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 of the Guaranteed Portion of the Borrower's payments made to the Lender 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.

Section 3.11. Lender Disclosure of Loan Data to FTA. 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.

#### **ARTICLE IV. THE GUARANTEE INTEREST CERTIFICATE**

- Section 4.1 Certificate as Evidence of Ownership. 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. 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.
- Section 4.2 Custodial Duties, Delivery and Transfer of Certificate. 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. 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. 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.
- Section 4.3 Certificate Assignment and Transfers. Each Registered Holder maintains under this Agreement the right to assign the Guaranteed Interest. Registered Holder may, without the consent of SBA, Lender or FTA, 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 (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 2.2 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.
- (a) Transfer of the Guaranteed Interest by Registered Holder may be effected by the transferee:
- (i) obtaining from the transferor the executed SBA Form 1088;
  - (ii) presenting the Certificate and executed SBA Form 1088 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, email address and telephone number of the person handling the transfer, and complete instructions for delivery of the new Certificate.
- (b) 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.

- (c) FTA will make payments on the 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.

Section 4.4. Certificates Lost, Destroyed, Stolen, Mutilated or Defaced. Procedures for claim resulting from loss, theft, destruction, mutilation or defacement of a Certificate are found in Secondary Market Regulations (13 C.F.R. Part 120 Subpart F). Upon written request, FTA will provide such procedures to any claimant.

#### **ARTICLE V. FTA OBLIGATIONS AND ADMINISTRATIVE RESPONSIBILITIES**

Section 5.1 FTA as Central Registrar. FTA shall serve as the central registry of Certificate ownership.

Section 5.2 FTA Obligations as Paying Agent. FTA shall have the obligation to remit to Registered Holder payments received pursuant to Article III of this Agreement (less applicable fees and penalties, if any), as follows:

- (a) Investor payment date will be the fifteenth of the month or the next business day if the fifteenth of the month 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.
- (b) 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.
- (c) Other amounts received from Lender by FTA will be held and applied as required by this Agreement.
- (d) FTA may offset from payments due to Registered Holder, for any guaranteed interests with beneficial ownership, any prior overpayments made to Registered Holder. FTA will provide Registered Holder FTA's transcript of account of the guaranteed interest in offset of any remittances pursuant to Section 5.2 (f) of this Agreement.
- (e) Prepayments pursuant to Article VII 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.

- (f) 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.
- (g) If FTA fails to make timely remittance to Registered Holder in accordance with this Section, the 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.

Section 5.3 Payment Report Reconciliation. 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 Section 3.9 has been submitted to FTA by Lender. Such identified differences will be reconciled on a timely basis.

Section 5.4 Administrative Duties to Registered Holder.

- (a) FTA agrees to issue Certificates within two (2) business days of settlement or receipt of the SBA Form 1088.
- (b) FTA agrees to acknowledge any request from Registered Holder for late payment claims within ten (10) business days of receipt.
- (c) FTA agrees to forward to Registered Holder, within one (1) business days of receipt, any servicing request requiring concurrence of Registered Holder. FTA agrees to forward Registered Holder's response to Lender within one (1) business days of receipt. If FTA does not receive a response from Registered Holder within ten (10) calendar days from the date of the request, Registered Holder will be deemed to have submitted a response of non-consent. FTA is directed to take appropriate action pursuant to Sections 6.1, 6.2 and 7.6 of this Agreement.
- (d) Where the Guaranteed Interest is a part of a Pool pursuant to 13 C.F.R. Part 120 Subpart F of SBA's 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.

Section 5.5. FTA Obligation for Late Payments on Guarantee Purchase Payments. FTA agrees to pay accrued interest for any Loan, which FTA fails to include in the late payment report described in Section 6.1. 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.

Section 5.6 Loan Payment Report Processing and Delivery to SBA. 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: FTA's website or SFTP (Secured File Transfer Protocol). 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 five (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 loans. 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.

## **ARTICLE VI. PURCHASE OF GUARANTEED INTEREST**

### **Section 6.1 Purchase 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.
- (b) 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 Section 3.8 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 reserves the right to offset guaranty proceeds paid against any excess interest amount due.

- (c) 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 of the guaranteed portion of the Loan from Lender. Lender agrees to provide the transcript of account within five (5) 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.
- (d) FTA and Lender will attempt to reconcile the transcript of account of the guaranteed portion of the Loan 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, 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.

- (e) 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. The wire must be accompanied by SBA Form 1502 for the prepayment funds. An officer of the Lender must also provide a certification that the Borrower has defaulted on a payment due under the Note for sixty (60) days or more and repurchase is being made pursuant to Section 6.1 of this Agreement.
- (f) Upon receipt of the purchase amount from Lender (or from SBA pursuant to Section 6.2 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.
- (g) 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 SBA Loan Program Requirements and any continuing provisions of this Agreement. SBA may request both Lender's and FTA's transcripts for reconciliation. SBA's reconciliation will be final.

Section 6.2 Purchase of Guaranteed Interest 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.

- (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 of account of the guaranteed portion of the Loan 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.
- (b) Within five (5) 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.
- (c) 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. 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.

- (d) If Lender fails to furnish a current transcript of account of the guaranteed portion of the Loan and the statements as required by this Section and Section 8.5(a)(i) of this Agreement within five (5) 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.
- (e) SBA shall not be liable for any amount attributable to any late payments.
- (f) 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.
- (g) Upon purchase of the Guaranteed Interest by SBA pursuant to this Section, 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.

## **ARTICLE VII. PREPAYMENT OR REFINANCING BY BORROWER**

Section 7.1 Permissibility of Prepayment. A Borrower may prepay a Loan guaranteed by SBA at any time.

Section 7.2 Definition of Prepayment. A prepayment subject strictly to this Section is any payment, which is greater than twenty percent (20%) of the principal amount outstanding at the time of prepayment.

Section 7.3 Advance Written Notice from Lender. Lender shall transmit written notice to FTA of Borrower's intent to make a partial or full prepayment of principal. Such prepayment can be from a 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:

- (a) SBA Loan number and Borrower name;
- (b) Prepayment date;



- (c) Principal amount of the guaranteed portion of the Loan being prepaid; and
- (d) The accrued interest on the guaranteed portion of the Loan due the FTA as of prepayment date (interest shall accrue through and including the calendar day immediately preceding the prepayment date).

FTA shall, upon receipt of notice pursuant to this Section, 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.

**Section 7.4 Performance.** On the prepayment date, Lender will wire the amount due to FTA without notification from FTA. The wire must be accompanied by SBA Form 1502 for the prepayment funds. An officer of the Lender must also provide the following certifications:

- (a) The prepayment is in accordance with the terms of this Agreement, the Note and applicable law; and
- (b) The prepayment funds are either Borrower's own funds or funds borrowed by Borrower from this or another lending institution (whether or not guaranteed by SBA) pursuant to a separate transaction.

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. 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 Section 7.3 of this Agreement.

**Section 7.5 Remittance to Registered Holder.** FTA will remit the prepayment amount to Registered Holder in accordance with Section 5.2 of this Agreement.

**Section 7.6. 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 the Registered Holder. Such permission, to be effective, must be in writing.

- (a) 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.
- (b) 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 likely fail if the change is not approved; and
  - (ii) It is probable that the business will survive and resume payment if the change is approved.
- (c) If all conditions are met, the SBA Servicing Office may approve the purchase of the Guaranteed Interest by Lender. If Lender purchases the Guaranteed Interest pursuant to this Section 7.6, Lender must also follow the provisions of Section 6.1 and provide FTA with ten (10) business days advance written notice of the date of purchase. Lender must also provide FTA with the written approval from the SBA Servicing Office to repurchase the Guaranteed Interest in lieu of the prepayment certification as required by Section 7.4.

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

- (d) Unless all conditions in this Section are met, Lender may repurchase a loan only on a willing buyer-willing seller basis, subject to SBA approval. Lender liquidity or a desire to add loans to a portfolio are not acceptable reasons to pay off a loan at par.

#### **ARTICLE VIII. EVENTS OF DEFAULT**

Section 8.1 Default by Lender. When SBA determines that the Lender has failed for any reason to remit to FTA the payments required pursuant to Article III of this Agreement, SBA may purchase the Guaranteed Interest under the provisions of Section 6.2 of this Agreement, provided however, under no circumstances shall SBA be liable for any amount attributable to any late payment charge.

Section 8.2 Remedies Available to SBA. 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:

- (a) 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
- (b) to require Lender to pay SBA a penalty equal to twenty percent (20%) of the amount paid by SBA to Registered Holder.

Section 8.3 SBA Reliance on FTA Transcript. If Lender fails to furnish a current transcript of account of the guaranteed portion of the Loan and the statements as required by Section 8.5(a)(i) within five (5) 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.

Section 8.4 SBA Rights Following Purchase of Guaranteed Interest Arising from Lender Default. If on the date SBA purchases the Guaranteed Interest from Registered Holder pursuant to Section 8.1, and Borrower shall be in uncured default for more than sixty (60) calendar days, then the provisions of Section 6.2(f) and 6.2(g) of this Agreement will become applicable in lieu of Section 8.2.

Section 8.5 Lender Obligations in Support of SBA Purchase of Guaranteed Interest. Lender hereby consents to the purchase of the Guaranteed Interest by SBA in accordance with Section 6.2 and Section 8.1 of this Agreement, as applicable.

- (a) Lender shall, within five (5) business days of a SBA purchase request therefor(e), and without charge, furnish to SBA and FTA:
  - (i) a transcript of account of the guaranteed portion of the Loan;
  - (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.

Lender agrees that failure to provide the information requested pursuant to this Section 8.5 may result in a \$100 penalty payable to SBA.

- (b) Lender agrees that purchase of the Guaranteed Interest pursuant to Sections 6.2 and 8.1 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.
- (c) Lender agrees that SBA, as final owner of the Guaranteed Interest under this Agreement, in addition to all rights under the 750 Agreement and 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 SBA Loan Program Requirements.
- (d) 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.

Section 8.6. Default by Fiscal and Transfer Agent. If FTA receives any payment from Lender or SBA and fails to remit to Registered Holder pursuant to Article V of this Agreement, Registered Holder shall have the right to make written demand on FTA for any payment not remitted by FTA.

- (a) If FTA fails to remit any such payment within five (5) business days of such demand, Registered Holder shall have the right to make written demand on the SBA Servicing Office identified in this Agreement.
- (b) 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 date of payment by SBA, or (ii) purchase the Guaranteed Interest pursuant to Section 6.2 of this Agreement.
- (c) FTA shall repay SBA within five (5) 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 Section 5.2 of this Agreement.

## **ARTICLE IX. MISCELLANEOUS**

Section 9.1 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 SBA Loan Program Requirements. Any such side agreement, which has the effect of distorting the information supplied to SBA, is prohibited.

Section 9.2 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.

Section 9.3 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 Sections 3.2, 3.5, 3.10, 5.2, 6.1, 6.2, 7.4, 8.2 and 8.5), 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 loan in the Lender's portfolio.

Section 9.4 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. Part 120 Subpart F) 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 Sections herein are for case of reference only and are not to be deemed part of these Terms and Conditions.

