

U.S. Small Business Administration

America's Recovery Capital
National ARC
Authorization
Boilerplate

Version 2009

June 15, 2009

Read this first!

About this document

This document contains version 2009 of the National ARC Authorization Boilerplate ("Boilerplate"). The Boilerplate contains mandatory national standard language.

About the "ARC Wizard"

The ARC Wizard, sometimes referred to as "Wizard," was automated using Microsoft Word and has been designed to run in Word 2003 (11). The ARC Wizard has been programmed in Visual Basic for Applications (VBA). The Wizard is compatible to a limited degree with Word 2000 (9) and Word 2002 (10). SBA cannot effectively support compatibility issues relating to versions of Word other than Word 2003 (11). The Wizard is not currently compatible with Word 2007 (12).

Together, the Boilerplate and the Wizard constitute the "Authorization." The Wizard is a technical tool intended to make it easier for SBA and lenders to create authorizations based on the Boilerplate. It is not an expert system with lots of checks and balances. Use of the Wizard or any other automation tool does not release lenders from their responsibility to ensure that the authorizations they create comply with the Boilerplate. The ARC Authorization Boilerplate is an appendix to the America's Recovery Capital (ARC) Program Procedural Guide.

Below is the list of ARC Wizard sections with their location in the Boilerplate:

1. For ARC Wizard users:	Loan Information section starts here...	1
2. For ARC Wizard users:	Repayment Terms section starts here...	5
3. For ARC Wizard users:	Use of Proceeds section starts here...	7
4. For ARC Wizard users:	Collateral Conditions section starts here...	8
5. For ARC Wizard users:	Additional Conditions (Part I) starts here...	11
6. For ARC Wizard users:	Additional Conditions (Part II) starts here...	18
7. For ARC Wizard users:	Signature Block section starts here...	23

Getting the latest version of the Authorization

The latest version of the Authorization can be obtained from the SBA web site at www.sba.gov/aboutsba/sbaprograms/elending/authorizations or from any local SBA Office.

Format Conventions

All comments, references and instructions in the sections titled "Boilerplate" and "Appendix A" are located in shaded areas (gray or blue shade). All non-shaded areas in these two sections and Appendix A constitute the standardized text itself.

Text appearing in brackets [] must be completed, for instance:

[Name]—must be replaced by a name in the final authorization;

[Amount]—must be replaced by a \$ amount;

[OPTION—This sentence is optional]—Optional text—can be inserted or not;

[SELECT—this text—OR—that text]—User must select one of the available options;

[SELECT—First, Second, Third, Fourth, Fifth]—User must select one of the listed items;

[Write Your Own]—User can insert own text

Paragraphs will be renumbered depending on which options are selected. All other comments should be self-explanatory.

Operational Reminders:

- Names and addresses may be saved by right-clicking in any textbox after initial entry. Names and addresses may be retrieved by right-clicking in an empty textbox.
- Assure that the Windows in Taskbar option is turned off (Tools | Options | Windows in Taskbar -- uncheck) as well as Smart cut and paste (Tools | Options | Edit).
- Please review the Wizard Settings Fact Sheet (WizardFacts.doc), available on the ARC Wizard website and located in your templates directory after installation, for recommended optimal Word settings.

What's new in this version?

Version 2009, released June 15, 2009

Version 2009 is the initial version of the SBA Authorization Wizard released to implement Section 506 of the "American Recovery and Reinvestment Act of 2009".

The Section 506 loan program is referred to as "America's Recovery Capital Loan Program." Within the Authorization the program may be abbreviated as "ARC".

Boilerplate

For ARC Wizard users:

Loan Information section starts here...



U.S. Small Business Administration

AUTHORIZATION (AMERICA'S RECOVERY CAPITAL (ARC) LOAN)

SBA Loan Information

The SBA LOAN NAME is the **first available** of this list:

1. dba of the Borrower
2. name of the Borrower

For ARC Wizard users: The ARC Wizard automatically selects the SBA Loan Name based on the Borrower Information provided.

SBA Loan #	[SBA Loan Number]
SBA Loan Name	[SBA Loan Name]
Approval Date	[Approval Date]

Lender / SBA Information

13 CFR 120.10—Definition of Authorization states that the Authorization is not a contract to make a loan. The Authorization is not a Loan Agreement. It is intended to provide Lender with the specific conditions which must be met for SBA to provide a guarantee of the loan Lender is making to Borrower. It is not a contract to loan money, and Borrower is not a third party beneficiary of the Authorization. SBA does not lend money to Borrower and cannot force Lender to make a loan to Borrower based on the Authorization.

The ARC Loan Program is authorized through September 30, 2010, or until appropriated funds are exhausted, whichever is sooner.

13 CFR 120.398—America's Recovery Capital (ARC) Loan Program.

Lender:

[Lender's Name]
[Address]
[City, State Zip]

U. S. Small Business Administration (SBA):

[SBA Office's Name]
[Address]
[City, State Zip]

SBA Loan Number: [Loan Number]

SBA Loan Name: [Loan Name]

General Loan information

SBA approves, under Section 506 of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5, 123 Stat. 115), Lender's application, received **[Date Accepted]**, for SBA to guarantee **100%** of a loan ("Loan") in the amount of **[\$ARC Loan Amount = [<= \$35,000]]** to assist:

Borrower Information

Borrower:

1. **[Name 1] [OPTION—dba
[DBA Name]]
[Address]
[City, State Zip]**
2. **[Name 2] [OPTION—dba
[DBA Name]]
[Address]
[City, State Zip]**
3. **[etc.]**

Lender's responsibility

13 CFR 120.400 et seq.

A. IT IS LENDER'S SOLE RESPONSIBILITY TO:

1. Close the Loan in accordance with the terms and conditions of this Authorization.
2. Obtain valid and enforceable Loan documents, including obtaining the signature or written consent of any obligor's spouse if such consent or signature is necessary to bind the marital community or create a valid lien on marital property.
3. Retain all Loan closing documents. Lender must submit these documents, along with other required documents, to SBA for review if Lender requests SBA to honor its guarantee on the Loan, or at any time SBA requests the documents for review.

Required Forms

ARC Loan Program Procedural Guide, Sections 5.a.(1) and 7.b.(2).

B. REQUIRED FORMS

1. Lender may use its own forms except as otherwise instructed in this Authorization. Lender must use the following SBA forms for the Loan:
 - SBA Form 2318, Note (America's Recovery Capital (ARC) Loan)
[MUST APPEAR when applicable—SBA Form 2320, Unconditional Guarantee (America's Recovery Capital (ARC) Loan)]
 - [MUST APPEAR when applicable—SBA Form 2319, Unconditional Limited Guarantee (America's Recovery Capital (ARC) Loan)]**
 - SBA Form 159 (7a), Compensation Agreement, if required under America's Recovery Capital (ARC) Loan Program Procedural Guide
2. Lender may use computer-generated versions of mandatory SBA Forms, as long as these versions are exact reproductions.

Contingencies

ARC Loan Program Procedural Guide, Sections 4.f.(3)(i); 4.f.(8); 7.b.(3) and 8.a.

C. CONTINGENCIES—SBA issues this Authorization in reliance on representations in the Loan application, including supporting documents. The guarantee is contingent upon Lender:

1. Having and complying with a valid SBA Loan Guarantee Agreement (SBA Form 750 or SBA Form 750B for short-term loans) and any required supplemental guarantee agreements, between Lender and SBA;
2. Complying with the current applicable regulations, America's Recovery Capital (ARC) Loan Program Procedural Guide, and current SBA Standard Operating Procedures (SOPs);
3. Completing disbursement no later than eight (8) months from the approval date of this Authorization. The first disbursement must be made within 90 days of the approval date of this Authorization or the Loan will be automatically cancelled by SBA. Any undisbursed balance remaining eight (8) months from approval will be automatically cancelled by SBA;
4. Disbursing Loan Proceeds in consecutive monthly disbursements;
5. Not collecting any fees or costs from Borrower related to this Loan other than the direct costs of securing and liquidating collateral;
6. Having no evidence since the date of the Loan application, or since any preceding disbursement, of any unremedied adverse change in the financial condition, organization, management, operation, or assets of Borrower which would warrant withholding or not making any further disbursement. If this Authorization is dated more than 45 days prior to first disbursement, Lender must obtain satisfactory evidence that there has been no unremedied adverse change (as set forth in SOP 50 10 5(A)) since the date of the application that would warrant withholding or not making any disbursement;
7. Submitting any request for purchase no later than 120 days from the first uncured ARC principal payment default and limiting liquidation expense reimbursement requests to direct costs that do not exceed the amount of recovery Lender receives from Loan liquidation; and,
8. Satisfying all of the conditions in this Authorization.

D. INTEREST PAYMENTS

1. The interest rate on this Note will fluctuate. The initial interest rate for this Note is the Prime Rate (as published in the Wall Street Journal) in effect on the first business day of the month in which the SBA received the loan application plus 2.0% per year. The Prime Rate will be rounded to two decimal places with .004 being rounded down and .005 being rounded up. This rate will be adjusted on the first business day of each month thereafter, using the Prime Rate (as published in the Wall Street Journal) in effect on that date. Borrower will not pay interest on this Note. Interest will be paid by SBA to the Lender in arrears on a monthly basis beginning the month following the initial disbursement. Lender may not increase the interest rate at default. The interest rate at default is the same as the interest rate in effect on the date of the earliest uncured payment default.
2. Lender will use the following method for calculating monthly interest:

Select one of the following 2 calculation options

[[**SELECT** [30/360 OR Actual Days/365]]].

3. SBA will not pay interest on accrued interest.
4. Lender must bill the SBA monthly in arrears for the interest due on Form 1502. Interest will be paid by SBA after required 1502 reports on the Loan have been validated by SBA's DFC. If the amount requested is within established tolerance limits, SBA will pay the requested amount. If the amount requested is outside established limits, no interest will be paid and the Lender will be contacted to resolve the discrepancy. If Lender fails to file a 1502 report, no further interest will be paid until all required reports have been filed and validated.
5. SBA or SBA's agent will perform one or more reconciliations of the interest billed and paid. If the reconciliation shows an interest overpayment, Lender will be responsible for paying SBA any amounts due SBA, and SBA may net the interest amount due from future interest payments or guarantee purchase amounts due the Lender. If the reconciliation shows an underpayment, SBA will pay any amounts due Lender as a result of a reconciliation. Lender will provide an ARC Loan transcript within 10 days of any request from SBA.
6. After default, SBA will only pay interest until 120 days from the first uncured ARC principal payment default. Payment of interest after default is contingent upon any request for purchase of Loan being submitted no later than 120 days from the first uncured ARC principal payment default. At purchase, SBA will adjust the purchase amount to reconcile for any overpayments or underpayments previously paid to Lender.
7. If the SBA guarantee is cancelled after loan disbursement has begun due to character ineligibility, financial information verification issues, or for any other reason, any interest payments disbursed to the Lender prior to such cancellation must be promptly repaid to SBA.

Maturity

E. NOTE TERMS

1. **Maturity:** This Note will mature in [[**Number of Consecutive Periodic Payment months** [≥ 1 and ≤ 6]] + 12 + 60] months from the date of initial disbursement.

2. Repayment Terms:

Lender must insert onto SBA Note, Form 2318, to be executed by Borrower, the following terms, without modification. Lender must complete all blank terms on the Note at time of closing:

13 CFR 120.213 through 215

Borrower must make principal-only payments in the amount of \$[**ARC Loan Principal Repayment Amount [ARC Loan Amount divided by 60]**] starting [**12 + [Number of Consecutive Periodic Payment months—from E.1]**] months from the date of initial disbursement.

Lender will apply each payment from Borrower to principal.

All remaining principal is due and payable [**[Number of Consecutive Periodic Payment months—from E.1] + 12 + 60**] months from the date of initial disbursement.

Balloon payments on this Note are not allowed.

Borrower may prepay all or a portion of this Note without penalty.

If more than two percent (2%) of the Loan is cancelled, the Note will be reamortized over the 60 repayment months.

Borrower will not pay interest on this Note. Interest will be paid by SBA to the Lender in arrears on a monthly basis beginning the month following the initial disbursement. The interest rate on this Note will fluctuate. The initial interest rate for this Note is the Prime Rate (as published in the Wall Street Journal) in effect on the first business day of the month in which the SBA received the loan application plus 2.0% per year. The Prime Rate will be rounded to two decimal places with .004 being rounded down and .005 being rounded up. This rate will be adjusted on the first business day of each month thereafter, using the Prime Rate (as published in the Wall Street Journal) in effect on that date. Lender may not increase the interest rate at default. The interest rate at default is the same as the interest rate in effect on the date of the earliest uncured payment default.

STATE SPECIFIC LANGUAGE

For ARC Wizard users: The ARC Wizard automatically inserts the following options as appropriate.

The following must appear when lien is on residential property located in California

1. Lender must include in the Note the following language for residential property located in California:

"Borrower acknowledges this Note is secured by a Deed of Trust in favor of Lender on real property located in _____ County, State of California. That Deed of Trust contains the following due-on-sale provision:..." (Lender must add to the Note the due on sale clause exactly as it appears in the Deed of Trust.)

The following must appear if any borrower is resident of Alaska

2. The following language must appear in the Note above the borrower's signature :

"The Mortgagor or Trust or (Borrower) is personally obligated and fully liable for the amount due under the Note. The Mortgagee or Beneficiary (Lender) has the right to sue on the Note and obtain a personal judgment against the Mortgagor or Trustor for the satisfaction of the amount due under the Note either before or after a judicial foreclosure of the Mortgage or Deed of Trust as under AS 09.45.170-09.45.220."

The following must appear if any borrower is resident of Wisconsin

3. Lender must include in the Note the following language:

"Each Borrower who is married represents that this obligation is incurred in the interest of his or her marriage or family."

The following must appear if any borrower is resident of Maryland

4. Lender must include valid confession of judgment clauses in the Note for borrower(s) resident in Maryland.

The following must appear if any borrower is resident of Virginia

5. Lender must include valid confession of judgment clauses in the Note for borrower(s) resident in Virginia.

The following must appear if any borrower is resident of Pennsylvania

6. Lender must include confession of judgment clauses in the Note for borrower(s) resident in Pennsylvania.

The following must appear if any borrower is resident of Delaware

7. Lender, at its option, may include confession of judgment clauses in the Note for borrower(s) resident in Delaware.

The following must appear if any borrower is resident of Ohio

8. Lender, at its option, may include confession of judgment clauses (cognovit judgment provisions) in the Note for borrower(s) resident in Ohio.

The following must appear if any borrower or guarantor is resident of Missouri

9. Lender shall comply with Section 432.047 RSMO by adding the following language in boldface ten point type to the Note, Guarantees and other Credit Agreements as defined by the Statute:

"Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which it is based that is in any way related to the credit agreement. To protect you (Borrowers(s)) and us (Creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are

contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it."

For ARC Wizard users:

Use of Proceeds section starts here...

F. USE OF PROCEEDS

1. Loan proceeds must be used for the following:

This paragraph may be repeated as many times as necessary

- a. **[\$[Total Qualifying Loan 1 payments]** over **[Number]** consecutive periodic payments to **[Qualifying Lender 1]** for a Loan with an approximate balance of **[\$[Qualifying Loan 1 Balance]**.
2. The Loan disbursement period is **[Number of Consecutive Periodic Payment months—from E.1]**.

ARC Loan Program Procedural Guide, Sections 4.c. to 4.e.

The following paragraphs must always appear

3. Loan proceeds must be directly applied to a Qualifying Loan Periodic Payment of principal and interest, in full or in part, for a Qualifying Loan or must be forwarded to a Qualifying Loan Lender in the joint name of Borrower and Qualifying Loan Lender for payment of principal and interest, in full or in part, on a Qualifying Loan. Loan proceeds may not be disbursed by Lender into an escrow or other account that holds funds for future disbursement.
4. If the Qualifying Loan is a Line of Credit from ARC Lender, and Lender allows Borrower to use the ARC Loan to make only one payment, then ARC Lender must defer the remaining 5 months of payments on the Line of Credit. If the Qualifying Loan is a Line of Credit from ARC Lender, Lender may not reduce the credit limit on the Line of Credit for at least 18 months after using the proceeds of the ARC Loan to pay down the principal balance of the Line of Credit, unless the Line of Credit defaults and is placed on non-accrual by the Lender.
5. If the Qualifying Loan is a Home Equity Loan or a Credit Card obligation, Lender must follow specific guidance in the America's Recovery Capital (ARC) Loan Program Procedural Guide for the type of Qualifying Loan.
6. Prior to first disbursement, Borrower must sign a disbursement schedule prepared by Lender, listing the date and amount of each Qualifying Loan payment by the ARC Loan, a copy of which must be kept in the loan file.
7. The amounts above are approximate. Lender may readjust each Qualifying Loan payments as long as no Qualifying Loan Lender is paid more than is due for each periodic payment on the Qualifying Loan, based on documentary evidence of the Qualifying Loan. Loan proceeds may not be used for any purpose other than to pay Qualifying Loan payments, in full or in part, except that ARC Loan payments may be used for balloon payments under limited circumstances described in the America's Recovery Capital (ARC) Loan Program Procedural Guide, and, in the sixth disbursement month, any remaining amount available on the Loan after the scheduled monthly periodic payment may be used to prepay principal on a Qualifying Loan.

G. COLLATERAL CONDITIONS

Lender must obtain a lien on 100% of the interests in the following collateral and properly perfect all lien positions:

Create as many collateral conditions as needed.

IMPORTANT—READ THIS FIRST!

This document offers an extensive choice of standard Collateral Conditions.

Refer to Appendix A for the full boilerplate text of these Collateral Conditions.

You can also write your own collateral conditions if the standard list does not offer the appropriate option.

ARC Loan Program Procedural Guide, Section 4.f.(12)—Guarantee requirements.

1. [Insert first Collateral Condition here]
2. [Insert second Collateral Condition here]
3. [Etc.—Insert as many Collateral Conditions as needed]

The following paragraphs must always appear

13 CFR 101.106, Federal Law application to SBA programs & activities.

The following language must appear in all lien instruments including Mortgages, Deeds of Trust, and Security Agreements:

“The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

- a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.*
- b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.*

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.”

For ARC Wizard users: The following paragraphs are automatically inserted by the Wizard as appropriate.

The following paragraphs must appear if any guarantor, any Borrower or any real estate is located in California

California Mandatory Provision—The following language must appear in a guarantee if the guarantor, any Borrower or any real estate is located in California:

"Guarantor waives its rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the guarantor by reason of California Civil Code Sections 2787 to 2855, inclusive.

The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property. This means, among other things:

- (1) The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.*
- (2) If the creditor forecloses on any real property collateral pledged by the debtor:*
 - (A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.*
 - (B) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.*

This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.

The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise."

If Guarantee is secured by Deed of Trust on residential property in California, Lender must also include in the guarantee the following language:

"Guarantor acknowledges that this Guarantee is secured by a Deed of Trust in favor of Lender On real property located in _____ County, California. That Deed of Trust contains the following due-on-sale provision:..." (Lender must add to the Guarantee the due on sale clause exactly as it appears in the Deed of Trust.)

The following paragraphs must appear if a guarantee is to be signed by a resident of Arizona

Arizona Mandatory Provision—The following language must appear in all guarantees (SBA Form 2319 or 2320) signed by Arizona residents:

"The undersigned waives any rights it may have pursuant to ARS Section 12-1641 et seq., and agrees pursuant to ARS Section 33-814 that the obligations of the undersigned may be enforced regardless of whether or not any Trustee's sale of security for this debt is held."

The following paragraphs must appear if a guarantee is to be signed by a resident of Wisconsin

Wisconsin Mandatory Provision—The following language must appear in all guarantees (SBA Form 2319 or 2320) signed by Wisconsin residents:

"Each Guarantor who is married represents that this obligation is incurred in the interest of his or her marriage or family."

The following paragraph must appear if a guarantee is to be signed by a resident of Maryland

Maryland Mandatory Provision—Lender must include valid confession of judgment clauses in guarantees signed by Maryland residents.

The following paragraph must appear if a guarantee is to be signed by a resident of Pennsylvania

Pennsylvania Mandatory Provision—Lender must include valid confession of judgment clauses in guarantees signed by Pennsylvania residents.

The following paragraph must appear if a guarantee is to be signed by a resident of Virginia

Virginia Mandatory Provision—Lender must include valid confession of judgment clauses in guarantees signed by Virginia residents.

The following paragraph must appear if a guarantee is to be signed by a resident of Missouri

Missouri Mandatory Provision—Lender shall comply with Section 432.047 RSMO by adding the following language in boldface ten point type to the Note, Guarantees and other Credit Agreements as defined by the Statute:

"Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which it is based that is in any way related to the credit agreement. To protect you (Borrowers(s)) and us (Creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it."

The following paragraph must appear if a guarantee is to be signed by a resident of Georgia

Georgia Mandatory Provision—The following language must appear in all guarantees (SBA Form 2319 or 2320) signed by Georgia residents:

"The undersigned Guarantor hereby waives the right to require the Holder of the obligations hereby guaranteed to take action against the debtor as provided for in O.C.G.A. 10-7-24."

The following paragraph must appear if a guarantee is to be signed by a resident of Kentucky

Kentucky Mandatory Provision—The following language must appear in all guarantees (SBA Form 2319 or 2320) signed by Kentucky residents:

“These provisions are for the purpose of KRS 371.065 only and do not waive or avoid guarantor’s obligations on this guarantee in part or in whole. The amount of the maximum principal aggregate liability of each guarantor is the note amount plus interest at the note rate, unless the maximum liability box is checked on SBA Form 2319, which would limit liability to the stated maximum liability plus interest at the note rate. The date on which this guarantee terminates is the maturity date of the note plus 6 years, provided such termination shall not affect extensions or renewals of interest accruing on, or fees, costs or expenses incurred with respect to, such obligations on or after such date. The above termination date is extended by any event that delays or avoids the statutes of limitations.”

The following paragraph must appear if a guarantee is to be signed by a resident of Delaware

Delaware Mandatory Provision—Lender, at its option, may include confession of judgment clauses in guarantees signed by Delaware residents.

For ARC Wizard users:

Additional Conditions (Part I) starts here...

H. ADDITIONAL CONDITIONS

INSURANCE REQUIREMENTS (MANDATORY)

1. Insurance Requirements

Prior to disbursement, Lender must require Borrower to obtain the following insurance coverage and maintain this coverage for the life of Loan:

Flood Insurance (MANDATORY for collateral)

13 CFR 120.170/SOP 50 10 5(A), Subpart B, Chapter 5—Flood Insurance. Note: The SBA requires flood insurance on personal property collateral even when the real estate where the property is located is not collateral but is in a flood area.

- a. **Flood Insurance.** Based on the Standard Flood Hazard Determination (FEMA Form 81-93):
 - (1) If any portion of a building that is collateral for the Loan is located in a special flood hazard area, Lender must require Borrower to obtain flood insurance for the building under the NFIP.
 - (2) If any equipment, fixtures, or inventory that is collateral for the Loan (“Personal Property Collateral”) is in a building any portion of which is located in a special flood hazard area and that building is collateral for the Loan, Lender must require Borrower to also obtain flood insurance for the Personal Property Collateral under the NFIP.

- (3) If any equipment, fixtures, or inventory that is collateral for the Loan (“Personal Property Collateral”) is in a building any portion of which is located in a special flood hazard area and that building is not collateral for the Loan, Lender must require Borrower to obtain available flood insurance for the Personal Property Collateral. Lender may waive SBA’s requirement for flood insurance for the Personal Property Collateral when the building is not collateral for the Loan, but only if Lender, using prudent lending standards, puts a written determination into the Loan file that flood insurance is either not available or not economically feasible.

Insurance coverage must be in amounts equal to the lesser of the insurable value of the property or the maximum limit of coverage available. Insurance coverage must contain a MORTGAGEE CLAUSE/LENDER'S LOSS PAYABLE CLAUSE (or substantial equivalent) in favor of Lender. This clause must provide that any action or failure to act by the debtor or owner of the insured property will not invalidate the interest of Lender and SBA. (Borrower will be ineligible for any future SBA disaster assistance or business loan assistance if Borrower does not maintain any required flood insurance for the entire term of the Loan.)

Real Estate Hazard Insurance (MANDATORY for real estate collateral)

13 CFR 120.160(c)/SOP 50 10 5(A), Subpart B, Chapter 5.

- b. **Real Estate Hazard Insurance** coverage on all [~~OPTION~~–business] real estate that is collateral for the Loan in the amount of the full replacement cost. If full replacement cost insurance is not available, coverage must be for maximum insurable value. Insurance coverage must contain a MORTGAGEE CLAUSE (or substantial equivalent) in favor of Lender. This clause must provide that any action or failure to act by the mortgagor or owner of the insured property will not invalidate the interest of Lender. The policy or endorsements must provide for at least 10 days prior written notice to Lender of policy cancellation.

Personal Property Hazard Insurance (MANDATORY for personal property collateral)

13 CFR 120.160(c)/SOP 50 10 5(A), Subpart B, Chapter 5.

- c. **Personal Property Hazard Insurance** coverage on all equipment, fixtures or inventory that is collateral for the Loan, in the amount of full replacement costs. If full replacement cost insurance is not available, coverage must be for maximum insurable value. Insurance coverage must contain a LENDER'S LOSS PAYABLE CLAUSE in favor of Lender. This clause must provide that any action or failure to act by the debtor or owner of the insured property will not invalidate the interest of Lender. The policy or endorsements must provide for at least 10 days prior written notice to Lender of policy cancellation.

Full Marine Insurance (OPTIONAL)

- d. **Full Marine Insurance** coverage in the amount of the full insurable value on the following vessel(s): [**List of insured Vessels**]; with Lender designated as "Mortgagee". The policy must contain a Mortgagee clause providing that the interest of Lender will not be invalidated by any: (1) act, omission, or negligence of the mortgagor, owner, master, agent or crew of the insured vessel; (2) failure to comply with any warranty or condition out of mortgagee’s control; or (3) change in title, ownership or management of the vessel. The policy must include Protection and Indemnity, Breach of Warranty, and

Pollution coverage. The policy or endorsements must provide for at least 10 days prior written notice to Lender of policy cancellation.

Life Insurance (OPTIONAL)

SOP 50 10 5(A), Subpart B, Chapter 5.

- e. **Life Insurance**, satisfactory to Lender:
- (1) on the life of **[Name of Individual]** in the amount of **#[Amount]**.
 - (2) on the life of **[Name of Individual]** in the amount of **#[Amount]**.
 - (3) **[add more if needed]**

Lender must obtain a collateral assignment of each policy with Lender as assignee, and Lender must also obtain acknowledgment of the assignment by the Home Office of the Insurer. Lender must assure that Borrower pays the premium on the policy.

Liability Insurance (OPTIONAL)

- f. **Liability Insurance** in an amount and with an insurance company satisfactory to Lender.

Product Liability Insurance (OPTIONAL)

- g. **Product Liability Insurance** in an amount and with an insurance company satisfactory to Lender.

Dram Shop/Host Liquor Liability Insurance (OPTIONAL)

- h. **Dram Shop/Host Liquor Liability Insurance** in an amount and with an insurance company satisfactory to Lender.

Malpractice Insurance (OPTIONAL)

- i. **Malpractice Insurance** in an amount and with an insurance company satisfactory to Lender.

Disability Insurance (OPTIONAL)

- j. **Disability Insurance** covering **[Names of Individuals]** in an amount and with an insurance company satisfactory to Lender.

Workers' Compensation Insurance (OPTIONAL)

- k. **Workers' Compensation Insurance** in an amount meeting state law requirements and with an insurance company satisfactory to Lender.

State Specific Insurance (OPTIONAL)

- l. **[SELECT or Write your own—State Specific insurance requirement, such as Florida Petroleum Liability Insurance (FLIRP)]**

**Insurance Requirements—Open Options
(Can be used to add other Insurance Requirements as needed)**

**ENVIRONMENTAL REQUIREMENTS (MANDATORY
for all commercial real property)**

SOP 50 10 5(A), Subpart B, Chapter 4, and applicable appendices—Environmental Policy and Procedure.

2. Environmental Requirements

- a. Lender may not disburse the Loan until it has:
 - (1) completed the review for potential environmental contamination required in SOP 50 10 5(A) (“Environmental Investigation”) on each business real property site taken as collateral, and;
 - (2) sufficiently minimized the risk from any adverse environmental findings discovered in the Environmental Investigation, or otherwise, as required by SOP 50 10 5(A), Chapter 4 (Environmental Policy and Procedure) and applicable appendices.

Insert the following paragraph (b) for non-Delegated authority loans when Lender did not submit the results of the Environmental Investigation.

- b. Lender must submit the results of the Environmental Investigation to the SBA office listed above for SBA approval prior to disbursement. If Lender or SBA determines from the Environmental Investigation that there is potential environmental contamination, Lender may not disburse the Loan until SBA is satisfied that the risk has been sufficiently minimized. Adverse environmental findings may lead to cancellation of the SBA guarantee.
- c. Lender should consult with the local SBA office where the real property is located to ascertain any state or local environmental requirements.

**Environmental Requirements—Open Options
(Can be used to create Environmental Requirements as needed)**

NOTE : If the Environmental Investigation submitted with the application reveals risks of environmental contamination, and there is a reasonable expectation that any environmental issue can be resolved under the guidelines of SOP 50 10 5(A), the Loan Officer, in consultation with counsel, should use this section to add Authorization conditions based on the SOP guidelines.

BORROWER AND GUARANTOR DOCUMENTS (MANDATORY)

3. Borrower and Guarantor Documents

The following paragraphs must always appear

- a. Prior to closing, Lender must obtain from Borrower and Guarantor a current copy of each of the following as appropriate:
 - (1) **Corporate Documents**—Articles or Certificate of Incorporation (with amendments), any By-laws, Certificate of Good Standing (or equivalent), Corporate Borrowing Resolution, and, if a foreign corporation, current authority to do business within this state.
 - (2) **Limited Liability Company (LLC) Documents**—Articles of Organization (with amendments), Fact Statement or Certificate of Existence, Operating Agreement, Borrowing Resolution, and evidence of registration with the appropriate authority.

- (3) **General Partnership Documents**—Partnership Agreement, Certificate as to Partners, and Certificate of Partnership or Good Standing (or equivalent), as applicable.
 - (4) **Limited Partnership Documents**—Partnership Agreement, Certificate as to Partners, and Certificate of Partnership or Good Standing (or equivalent), as applicable, Certificate of Limited Partnership, and evidence of registration with the appropriate authority.
 - (5) **Limited Liability Partnership (LLP) Documents**—Partnership Agreement, Certificate as to Partners, Certificate of Partnership or Good Standing (or equivalent) as applicable, and evidence of registration with the appropriate authority.
 - (6) **Trustee Certification**—A Certificate from the trustee warranting that:
 - (a) The trust will not be revoked or substantially amended for the term of the Loan without the consent of SBA;
 - (b) The trustee has authority to act;
 - (c) The trust has the authority to borrow funds, guarantee loans, and pledge trust assets;
 - (d) If the trust is an Eligible Passive Company, the trustee has authority to lease the property to the Operating Company;
 - (e) There is nothing in the trust agreement that would prevent Lender from realizing on any security interest in trust assets;
 - (f) The trust agreement has specific language confirming the above; and
 - (g) The trustee has provided and will continue to provide SBA with a true and complete list of all trustors and donors.
 - (7) **Trade Name**—Documentation that Borrower has complied with state requirements for registration of Borrower’s trade name (or fictitious name), if one is used.
- b. Prior to closing, Lender must obtain from Borrower:
- (1) **Ownership**—Evidence that ownership and management have not changed without Lender's approval since the application was submitted.

The Following Paragraphs (2 to 9) are optional

Note: Paragraph (4), (6), (7), (8) and (9) may be repeated if necessary

- (2) **Purchase-Sale Agreement**—Executed Purchase-Sale Agreement [**OPTION**—(to include satisfactory non-compete agreement)].
- (3) **Bulk Sales or Transfer**—Evidence that seller has complied with Bulk Sales or Transfer provisions of state law, if applicable, or has arranged to protect Borrower’s purchased assets from claims of seller’s creditors.
- (4) **Non-Compete**—Evidence that [**Principal’s Name**] does not have a Non-Compete Contract with [**Competitor’s Name**].
- (5) **Consideration for Stock Purchase**—A certification by the following corporation(s): [**List of Corporations**]; acknowledging that: (a) the Loan proceeds will be used to acquire all or part of its corporate stock; (b) it promises to be jointly and severally liable for the debt; (c) the Loan assistance constitutes sufficient consideration for such promise; and (d) it waives any defense relating to failure of consideration.
- (6) **Subordinate Funding**—Evidence that Borrower has received the proceeds of a loan from [**Name**] in the amount of \$[**Amount**], for a term of not less than [**Term**] years. This loan must be subordinate to the Loan.

- (7) **Other Funding (loan)**—Evidence that Borrower has received the proceeds of a loan from [Name] in the amount of \$[Amount], for a term of not less than [Term] years.
- (8) **Other Funding (grant or gift)**—Evidence that Borrower has received the proceeds of a grant or a gift from [Name] in the amount of \$[Amount].
- (9) **Other Funding (line of credit)**—Evidence that Borrower has received access to a line of credit from [Name] in the amount of \$[Amount].

**Borrower documents—Open Options
(Can be used to add other Borrower documents as needed)**

OPERATING INFORMATION (MANDATORY)

4. Operating Information

Prior to any disbursement of Loan proceeds, Lender must obtain:

Verification of Financial Information (MANDATORY)

- a. **Verification of Financial Information**—Lender must submit IRS Form 4506-T (SBA version) to the Internal Revenue Service to obtain federal income tax information on Borrower, for the last 3 years. If the business has been operating for less than 3 years, lender must obtain the information for all years in operation. This requirement does not include tax information for the most recent fiscal year if the fiscal year-end is within 6 months of the date SBA received the application. Lender must compare the tax data received from the IRS with the financial data or tax returns submitted with the Loan application, and relied upon in approving the Loan. Borrower must resolve any significant differences to the satisfaction of Lender and SBA. Failure to resolve differences may result in cancellation of the Loan.

If a Delegated Lender does not receive a response from the IRS or copy of the tax transcript within 10 business days of submitting the IRS Form 4506-T, then Lender may close and disburse the loan provided that Lender sends a second request following precisely the procedures detailed in SOP 50 10 5(A) and Lender performs the verification and resolves any significant differences discovered, even if the Loan is fully disbursed.

Non-delegated Lenders must follow the procedures included in SOP 50 10 5(A), Subpart B, Chapter 5 with regard to verification of financial information.

If a material discrepancy appears or the IRS advises that it has no record on the applicant, Lender must report immediately to the 7(a) LGPC and document the Loan file of the action taken. SBA will investigate the matter and may direct the Lender to secure additional information, proceed with loan processing, rescind approval of the Loan (if no disbursement has occurred), suspend further disbursement, call the Loan, or initiate recovery of any disbursed amounts. Any interest payments disbursed to the Lender prior to any loan cancellation must be repaid to SBA. In addition, the SBA office will determine if a referral of the matter to OIG is warranted and will make that referral.

Authority to Conduct Business (MANDATORY)

- b. **Authority to Conduct Business**—Evidence that Borrower has an Employer Identification Number and all insurance, licenses, permits and other approvals necessary to lawfully operate the business.

Flood Hazard Determination (MANDATORY)

- c. **Flood Hazard Determination**—A completed Standard Flood Hazard Determination (FEMA Form 81-93) if personal or real property collateral secures the loan.

Lease (OPTIONAL)

Use this provision if any collateral is on leased premises.

Paragraph d. is the general rule; use **paragraph e.** only if Lender has approval to allow a lease of less than the term of the loan; use **paragraph f.** to protect leasehold improvements; use **paragraph g.** if you are trying to keep the Borrower in the present location regardless of where the collateral is located.

SOP 50 10 5(A), Subpart B, Chapter 5—Collateral on Leased Property

- d. **Lease**—Current lease(s) on all business premises where collateral is located with term, including options, at least as long as the term of the Loan.
- e. **Lease**—Current lease(s) on all business premises where collateral is located, with an adequate term, including options, appropriate to the maturity of the Loan, considering location, type of business, and type of leasehold interest.
- f. **Lease**—Current lease(s) on all business premises where collateral is located with term, including options, at least as long as the term of the Loan plus **[number of years]** years.
- g. **Lease**—Current lease(s) on all business premises with a term, including options to renew exercisable by the Borrower, at least as long as the term of the Loan.

Agreement of Franchisor (OPTIONAL)

SOP 50 10 5(A), Subpart B, Chapter 5.

Note: Each option within the Agreement of Franchisor (options (1) to (4)) is optional. The Agreement of Franchisor is NOT mandatory for all franchises, nor is any of the 4 individual conditions. Each should be included only as the circumstances of a particular franchise loan approval may require.

- h. **Agreement of Franchisor:**
- (1) That Lender and SBA can have access to Franchisor's books and records relating to Borrower's billing, collections and receivables.
 - (2) Upon Loan payment default or deferment, to defer payment of franchise fees, royalties, advertising, and other fees until Borrower brings Loan payments current **[OPTION—or for [months] months, whichever is less]**.
 - (3) To give Lender 30 days notice of intent to terminate the Franchise Agreement.
 - (4) To give Lender the same opportunity to cure any defaults under the franchise or lease agreement that is given to Franchisee under the same agreements.

INJECTION (OPTIONAL)**5. Injection**

Lender must obtain evidence that prior to disbursement:

Select one or more of the following paragraphs (a to d)

- a. **Cash Injection**—At least \$[Amount] cash has been injected into the business as equity capital. This cash is for [Description].
- b. **Standby Debt Injection**—At least \$[Amount] cash has been injected into the business. This cash is for [Description]. Borrower may obtain this cash from a loan that is Standby Debt until Borrower pays Lender in full.
- c. **Equity Injection / Standby Debt Injection**—At least \$[Amount] cash has been injected into the business. The cash is for [Description]. Borrower may obtain cash from personal resources or from a loan that is Standby Debt until Borrower pays Lender in full. Any such debt must be covered by a standby agreement substantially equivalent to SBA Form 155, with no payment permitted.
- d. **Asset Injection**—Assets described as [Description] with a fair market value of not less than \$[Amount] have been injected into the business as equity capital.

STANDBY AGREEMENT (MANDATORY if Standby Debt Injection is selected above)**6. Standby Agreement****The following section must be repeated for each standby creditor**

- a. Lender to obtain Standby Creditor's Agreement from [Name], for \$[Amount], plus all accrued and future interest (Standby Debt).
[SELECT one of the following repayment options -
 - No payment of principal or interest is to be made on Standby Debt during the term of the Loan.
 - OR** Monthly payments of interest on Standby Debt, at [Rate]% per year, may be made if Borrower is not in default under the Note.
 - OR** Monthly payments of \$[Amount], consisting of principal and interest on Standby Debt, at [Rate]% per year, may be made if Borrower is not in default under the Note.
 - OR** Monthly payments of \$[Amount], consisting of principal and interest on Standby Debt, at [Rate]% per year, beginning [Begin Date] may be made if Borrower is not in default under the Note.
 - OR** (Write Your Own)]

Standby Creditor must subordinate any lien rights in collateral securing the Loan to Lender's rights in the collateral, and take no action against Borrower or any collateral securing the Standby Debt without Lender's consent. Lender must attach a copy of the Standby Note evidencing the Standby Debt to the Standby Creditor's Agreement. Lender may use its own form or SBA Form 155.

APPRAISAL (OPTIONAL)

7. Appraisal

Prior to disbursement, and in accordance with SOP 50-10, Lender must obtain:

The 4 following options may be used several times if necessary

- a. **Real Estate Appraisal** on the real property located at [**Address**], showing a fair market value of at least \$[**Amount**].
- b. **Equipment Appraisal** on the equipment (and fixtures if not included in a real estate appraisal) described as [**Description**], showing a fair market value of at least \$[**Amount**].
- c. **Marine Survey and Appraisal** on the vessel named [**Name**], showing a fair market value of at least \$[**Amount**].
- d. **Aircraft Appraisal** on the following aircraft—Make: [**Make**], Model: [**Model**], Year: [**Year**]—showing a fair market value of at least \$[**Amount**].

NON-CITIZENS (MANDATORY if applicable)

Use Option 1 for Non-Citizens with 50% or more ownership of the Borrower and Option 2 for Non-Citizens with 20-49% ownership of the Borrower.

Note: Paragraph (9) and (10) may be repeated if necessary

Select one of the following 2 options

Option 1 – Mandatory for Non-Citizens with at least 50% ownership of the Borrower

- 8. Prior to first disbursement, Lender must verify with US Citizenship and Immigration Services, using Form G-845, that [**Name**] has Lawful Permanent Resident status.

Option 2 – Mandatory for Non-Citizens with 20-49% ownership of the Borrower

- 9. Prior to first disbursement, Lender must verify with US Citizenship and Immigration Services, using Form G-845, that [**Name**] has Lawful Permanent Resident status or legal alien status.

CERTIFICATIONS AND AGREEMENTS (MANDATORY)

The following paragraph always appears

10. Certifications and Agreements

- a. Prior to first disbursement, Lender must require Borrower to certify that:

SBA Guaranteed Loan (MANDATORY)

(1) SBA Guaranteed Loan—

- (a) SBA’s approval of this America’s Recovery Capital (ARC) Loan does not create a commitment by Lender to make a loan to Borrower;
- (b) If Borrower defaults on Borrower’s obligation to pay the principal of this Loan and any required expenses, SBA may be required to pay Lender under the SBA guarantee. SBA may then seek recovery of these funds from Borrower. Under SBA regulations, 13 CFR Part 101, Borrower may not claim or assert against

SBA any immunities or defenses available under local law to defeat, modify or otherwise limit Borrower's obligation to repay to SBA any funds advanced by Lender to Borrower.

- (c) Payments by SBA to Lender under SBA's guarantee will not apply to the Loan account of Borrower, or diminish the indebtedness of Borrower under the Note or the obligations of any personal guarantor of the Note.

***Business-Related Purpose 1
(MANDATORY FOR HOME EQUITY QUALIFYING LOAN)***

- (2) **Business-Related Purpose**—The total of the payments by this America's Recovery Capital (ARC) Loan on Borrower's home equity loan (line of credit or term loan) is not greater than the principal amount of the home equity loan that was used exclusively for business purposes.

***Business-Related Purpose 2
(MANDATORY FOR CREDIT CARD QUALIFYING LOAN)***

- (3) **Business-Related Purpose**—The total of the payments by this America's Recovery Capital (ARC) Loan on Borrower's credit card obligation(s) is not greater than the total of Borrower's specific business-related purchases charged to the credit card(s).

Child Support (MANDATORY)

- (4) **Child Support**—No principal who owns at least 50% of the ownership or voting interest of the company is delinquent more than 60 days under the terms of any (a) administrative order, (b) court order, or (c) repayment agreement requiring payment of child support.

Current Taxes (MANDATORY)

- (5) **Current Taxes**—Borrower is current on all federal, state, and local taxes, including but not limited to income taxes, payroll taxes, real estate taxes, and sales taxes.

Environmental (MANDATORY)

SOP 50 10 5(A), Subpart B, Chapter 7.

- (6) **Environmental** — For any real estate pledged as collateral for the Loan or where the Borrower is conducting business operations (collectively "the Property"):
 - (a) At the time Borrower submitted the Loan application, Borrower was in compliance with all local, state, and federal environmental laws and regulations pertaining to reporting or clean-up of any hazardous substance, hazardous waste, petroleum product, or any other pollutant regulated by state or federal law as hazardous to the environment (Contaminant), and regarding any permits needed for the creation, storage, transportation or disposal of any Contaminant;
 - (b) Borrower will continue to comply with these laws and regulations;
 - (c) Borrower , and all of its principals, have no knowledge of the actual or potential existence of any Contaminant that exists on, at, or under the Property , including groundwater under such Property other than what was disclosed in connection with the Environmental Investigation of the Property;
 - (d) Until full repayment of Loan, Borrower will promptly notify Lender and SBA if it knows or suspects that there has been, or may have been, a release of a Contaminant, in, at or under the Property, including groundwater, or if Borrower or such property are subject to any investigation or enforcement action by any federal, state or local environmental agency (Agency) pertaining to any Contaminant on, at, or under such Property, including groundwater.

- (e) As to any Property owned by Borrower, Borrower indemnifies, and agrees to defend and hold harmless, Lender and SBA, and any assigns or successors in interest which take title to the Property, from and against all liabilities, damages, fees, penalties or losses arising out of any demand, claim or suit by any Agency or any other party relating to any Contaminant found on, at or under the Property, including groundwater, regardless of whether such Contaminant resulted from Borrower's operations. (Lender or SBA may require Borrower to execute a separate indemnification agreement).

The following paragraph always appears

- b. Lender must require Borrower to certify that it will:
- (1) **Reimbursable Expenses**—Reimburse Lender for the direct costs of securing and liquidating collateral.

Books, Records and Reports (MANDATORY)

- (2) **Books, Records, and Reports**—
- (a) Keep proper books of account in a manner satisfactory to Lender;
- (b) Furnish [~~OPTION—compiled—OR—reviewed—OR—audited~~] year-end statements to Lender within [**number of days, default is 120**] days of fiscal year end;
- (c) Furnish additional financial statements or reports whenever Lender requests them;
- (d) Allow Lender or SBA to:
- [1] Inspect and audit books, records and papers relating to Borrower's financial or business condition; and
- [2] Inspect and appraise any of Borrower's assets; and
- [3] Allow all government authorities to furnish reports of examinations, or any records pertaining to Borrower, upon request by Lender or SBA.

Equal Opportunity (MANDATORY)

13 CFR 120.176/SOP 50 10 5(A), Subpart B, Chapter 7.

- (3) **Equal Opportunity**—Post SBA Form 722, Equal Opportunity Poster, where it is clearly visible to employees, applicants for employment and the general public.

American-made Products (MANDATORY)

This provision is required by Congress and is included in SBA's appropriations laws.

- (4) **American-made Products**—To the extent practicable, purchase only American-made equipment and products with the proceeds of the Loan.

Taxes (MANDATORY)

SOP 50 10 5(A), Subpart B, Chapter 7.

- (5) **Taxes**—Pay all federal, state, and local taxes, including income, payroll, real estate and sales taxes of the business when they come due.

**Certifications and Agreements—Open Options I
(Use to add other Certifications and Agreements as needed)**

The following paragraph always appears

- c. Lender must require Borrower to certify that it will not, without Lender's prior written consent:

Distribution (MANDATORY)

- (1) **Distributions**—Make any distribution of company assets that will adversely affect the financial condition of Borrower.

Ownership Changes (MANDATORY)

- (2) **Ownership Changes**—Change the ownership structure or interests in the business during the term of the Loan.

Transfer of Assets (MANDATORY)

- (3) **Transfer of Assets**—Sell, lease, pledge, encumber (except by purchase money liens on property acquired after the date of the Note), or otherwise dispose of any of Borrower's property or assets, except in the ordinary course of business.

Fixed Asset Limitation (OPTIONAL)

- (4) **Fixed Asset Limitation**—Acquire by purchase or lease agreement any fixed assets (totaling more than \$[Amount] in any year).

Location Limitation (OPTIONAL)

- (5) **Location Limitation**—Acquire by purchase or by lease, any additional locations.

Limitation on Compensation (OPTIONAL)

- (6) **Limitation on Compensation**—Allow total annual salaries, withdrawals or other forms of remuneration to officers or owners of Borrower and Borrower's immediate family members, to exceed \$[Amount].

**Certifications and Agreements—Open Options II
(Use to add other Certifications and Agreements as needed)**

For ARC Wizard users:

Signature Block section starts here...

ADMINISTRATOR
SMALL BUSINESS ADMINISTRATION

[Approval Date]

By: [Name, Title]

Date

[MUST APPEAR if loan by Delegated Lender—a Delegated Lender, as Lender and as an agent of and on behalf of the SBA for the purpose of executing this Authorization.]

The following appears for non-Delegated loans only

In consideration of SBA's guarantee of the Loan to be made by Lender to Borrower, Lender accepts the above conditions.

[Lender's Name]

By: (Name, Title)

Date

Appendix A

Standard Collateral Conditions

PLEASE READ THIS FIRST !

This appendix is used for America's Recovery Capital (ARC) Loan Authorizations

Index of Standard Collateral Conditions

Page A-

A. GUARANTEES	2
1. Full Unsecured Guarantee (for ARC Loans)	2
2. Full Secured Guarantee (for ARC Loans)	2
3. Limited Unsecured Guarantee (for ARC Loans)	2
4. Limited Secured Guarantee (for ARC Loans)	3
B. REALTY AND LEASEHOLDS	3
1. Lien On Land And Improvements	3
2. Collateral Assignment of (or lien on) Purchaser's Interest in Land Contract of Sale	6
3. Collateral Assignment of (or lien on) Seller's Interest in Land Contract of Sale	8
4. Assignment of Beneficial Interest and Power of Direction in Land Trust	8
5. Leasehold Instrument on Building Constructed on Leased Land	9
6. Leasehold Security Interest in building on leased land	12
7. Lessee's Interest in a Lease by Assignment	13
8. Lessee's Interest in a Lease by Lien, Mortgage or Deed of Trust	13
9. Leasehold on Tribal Land	14
10. Cooperative Apartment	14
C. SECURITY INTERESTS	14
1. Personal Property	14
2. Liquor License	16
3. Vehicle	16
4. Mobile Home	16
5. Aircraft	17
6. Vessel	17
D. ASSIGNMENTS OF INTEREST	18
1. Certificate of Deposit	18
2. Mutual Fund	18
3. Corporate Stock (by pledge)	18
4. Note	18
5. Contract	18
6. Government Contract	18
7. U.S. Patent	19
8. Franchise Agreement	19

A. Guarantees

SBA generally takes a full unconditional guarantee.

America's Recovery Capital (ARC) Loan Program Procedural Guide, Paragraph 4.f.(12).

1. Full Unsecured Guarantee (for ARC Loans)

Guarantee on SBA Form 2320, by **[Name of guarantor]**, resident in **[State/Country Name]**.

2. Full Secured Guarantee (for ARC Loans)

Guarantee on SBA Form 2320, by **[Name of guarantor]**, resident in **[State/Country Name]**.

Note: When securing a guarantee, references to "Borrower" are replaced with "Guarantor", and references to "due on sale clause" are deleted.

Secured by: **[Reverts to full list of collateral conditions to select]**

3. Limited Unsecured Guarantee (for ARC Loans)

Limited Guarantee on SBA Form 2319, by **[Name of guarantor]**, resident in **[State/Country Name]**.

Select One And Only One Of The Following Paragraphs

PRINCIPAL REDUCTION LIMITATION: The Guarantee is of all amounts owing under the Note, and will continue until the outstanding principal balance of the Note is reduced below **[\$Amount]**, at which time Guarantor will be released from liability if the Note is not in default.

MAXIMUM LIABILITY LIMITATION: The Guarantee is limited to Guarantor's payment of **[\$Amount]**.

PERCENTAGE LIMITATION: The Guarantee is limited to Guarantor's payment of **[Percent]%** of all amounts owing under the Note at the time demand is first made on Guarantor, plus the same percentage of any direct costs of securing or liquidating collateral charged to the Note after demand, until Guarantor fully performs this Guarantee.

TIME LIMITATION: The Guarantee is of all amounts owing under the Note. The Guarantee will continue until **[number of years]** year(s) after the date of the Note (the "Guarantee Period"). If Borrower is in default at the end of the Guarantee Period, the Guarantee will continue until all defaults are cured.

COMMUNITY PROPERTY OR SPOUSAL INTEREST LIMITATION: The Guarantee is limited to Guarantor's community property or spousal interest in collateral pledged to secure the Note or any guarantee.

4. Limited Secured Guarantee (for ARC Loans)

Limited Guarantee on SBA Form 2319, by **[Name of guarantor]**, resident in **[State/Country Name]**.

Select One And Only One Of The Following Paragraphs

PRINCIPAL REDUCTION LIMITATION: The Guarantee is of all amounts owing under the Note, and will continue until the outstanding principal balance of the Note is reduced below **[\$Amount]**, at which time Guarantor will be released from liability if the Note is not in default.

MAXIMUM LIABILITY LIMITATION: The Guarantee is limited to Guarantor's payment of **[\$Amount]**.

PERCENTAGE LIMITATION: The Guarantee is limited to Guarantor's payment of **[Percent]%** of all amounts owing under the Note at the time demand is first made on Guarantor, plus the same percentage of any direct costs of securing or liquidating collateral charged to the Note after demand, until Guarantor fully performs this Guarantee.

TIME LIMITATION: The Guarantee is of all amounts owing under the Note. The Guarantee will continue until **[number of years]** year(s) after the date of the Note (the "Guarantee Period"). If Borrower is in default at the end of the Guarantee Period, the Guarantee will continue until all defaults are cured.

COLLATERAL/RECOURSE LIMITATION: The Guarantee is limited to the amount Lender obtains from the following collateral pledged by Guarantor: **[Collateral]**

COMMUNITY PROPERTY OR SPOUSAL INTEREST LIMITATION: The Guarantee is limited to Guarantor's community property or spousal interest in collateral pledged to secure the Note or any guarantee.

The following always appears

Note: When securing a guarantee, references to "Borrower" are replaced with "Guarantor", and references to "due on sale clause" are deleted.

Secured by: **[Reverts to full list of collateral conditions to select]**

B. Realty And Leaseholds

1. Lien On Land And Improvements

Note: Some of the options in this collateral condition will vary according to the state in which the real property is located. Refer to Appendix B for more information.

The following [Option – Shared] must appear in 7a, 504 and EWCP Authorizations only if shared lien position.

[Option – Shared] [SELECT - First, Second, Third, Fourth, Fifth] [SELECT - Deed of Trust, Mortgage or other state specific instrument] (including due on sale clause **[OPTION - and water rights, if any,] [OPTION - and assignment of rents]**) on land and improvements located at **[address of property]**. This property is **[SELECT - residential - OR - commercial - OR - agricultural]**. **[OPTION - The lien is limited to \$[amount].]**

The following must appear if first lien position.

- a. subject to no other liens.

The following must appear if junior lien position.

- b. subject only to prior lien(s) as follows:
 - (1) First: **[name of lienholder] [SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount], with a revolving provision limited to a total principal outstanding of \$[amount]]**.
 - (2) Second: **[name of lienholder] [SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount], with a revolving provision limited to a total principal outstanding of \$[amount]]**.
 - (3) **[etc., up to four]**.

The following must appear in 504 Authorizations only if shared lien position.

- c. The lien securing the 504 Loan is a shared lien pari passu with that of **[name of lender]** in the amount of **[\$[amount]]**. An intercreditor agreement, satisfactory to CDC and SBA, must be executed. The agreement (or a memorandum thereof) must be recorded.

The following paragraphs are optional.

Note : availability of options may vary depending on the state in which the real property is located - see Appendix B for more information.

- d. Any prior lien(s) that is (are) open ended as to future advances must be closed, in writing, according to applicable state law. The revolving line(s) of credit set out above, if any, must be limited in writing to the amount stated.
- e. Lender must obtain a written agreement from prior lienholders to provide Lender with **[number of days]** days written notice before commencing foreclosure of prior lien.
- f. Lender to file a Request for Notice pursuant to state law. For 504 Loans, notice required to CDC and SBA CLSC.
- g. Written waiver of homestead required. (Residential property only.)
- h. Statement of non-homestead required. (Residential property only.)
- i. Written waiver of Business Homestead required if real property collateral is owned by an individual or an individual and spouse.
- j. Lender must obtain from prior lienholders written verification (1) of amount owing on prior obligation, (2) that prior obligation is current on payments, and (3) that prior obligation is not otherwise in default.
- k. Written waiver of redemption rights is required. (Non-residential property only.)
- l. Survey, certified to lender, is required, or prior survey and affidavit of no change acceptable to lender.
- m. Statutory Condition and the Statutory Power of Sale language required.

Select one and only one of the following choices, from (1) to (8)

- n. Evidence of title and priority of lien must be based upon:
- (1) ALTA Loan Policy, insuring lender and assigns,
[OPTION - in the amount of \$[Amount].]
[OPTION - with [specify required endorsements] endorsements,]
[OPTION - policy to be without standard exceptions (“extended ALTA”),]
[OPTION - policy to be without standard survey exception.]
[OPTION - policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]
[OPTION - Write Your Own]
 - (2) Mortgagee’s Title Policy insuring lender and assigns
[OPTION - in the amount of \$[Amount].]
[OPTION - policy to be without standard survey exception.]
[OPTION - policy to be without exception to Homestead, Survey or Taxes,]
[OPTION - policy must reflect that all taxes and municipal liens have been brought current or paid.]
[OPTION - Such policy must contain no exceptions for parties in possession, mechanic’s or materialman’s liens, or matters which would be disclosed by an accurate survey.]
[OPTION - Policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]
 - (3) Attorney’s certificate of title or title opinion in favor of lender and assigns certifying that lender has obtained the required lien position.
[OPTION - Certificate or opinion will not contain a survey exception or an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Certificate or opinion must address that the real property and its use are in compliance with state and federal environmental laws and regulations, as well as zoning, subdivision and land use laws, as determinable from all relevant publicly issued, filed or recorded governmental documents.]
 - (4) Title insurance customarily obtained for similar transactions in this jurisdiction.
 - (5) Title and/or Lien Search or other evidence of proper ownership and lien position.
 - (6) CLTA Loan Policy.
 - (7) Limited Title Policy.
 - (8) Property, Judgment and Lien Report indicating that lender has obtained the required position.

In addition to the above, a "write your own" option is provided in case a survey or other endorsement is required

(9) **[Write Your Own]**

The following paragraphs must appear in 504 Authorizations only when collateral is Project Property.

- o. CDC must obtain in recordable form written subordination agreements from any tenants occupying any of the Project real property required as collateral. Appropriate subordination language may be included in the Lease as an alternative.
- p. At the time of Closing, either:
 - (1) there must be no contractor's, mechanic's or materialman's lien on the Property, including a lien which might possibly be filed after Closing, which would impair the stated priority of the CDC/SBA lien, and there must be no other circumstances adversely affecting the value of the property; or,
 - (2) no exception for these in the title insurance commitment/policy, or
 - (3) the title insurance company must provide affirmative coverage to CDC and SBA over any such exceptions, affording reasonably adequate protection against material loss arising from such exceptions. In addition, the title insurance company must provide such endorsements as CDC or SBA deems necessary to protect CDC and SBA reasonably against material loss arising from any other exceptions. In states where a survey is customarily provided for title insurance coverage, Borrower must also provide a survey certified to SBA/CDC, or a prior survey acceptable to SBA/CDC and the title insurer and a satisfactory survey affidavit of no change.

2. Collateral Assignment of (or lien on) Purchaser's Interest in Land Contract of Sale

Note: Some of the options in this collateral condition will vary according to the state in which the real property is located. Refer to Appendix B for more information.

Collateral Assignment of (or lien on) Purchaser's Interest in Land Contract of Sale between **[Seller]** (Seller) and **[Purchaser]** (Purchaser), creating a valid lien on purchaser's interest covering real estate located at **[address of property]**, and its proceeds. **[OPTION - The lien is limited to \$[amount].]**

- a. The outstanding balance due Seller under contract is **[\$[Amount owed to seller].]**
- b. Lender must obtain from seller written verification (1) of amount owing on prior obligation, (2) that prior obligation is current on payments, and (3) that prior obligation is not otherwise in default.
- c. Assignment must contain the following conditions: (1) Right of reassignment; (2) Seller's consent; (3) Seller's agreement to give 60 days notice of forfeiture with right to cure; and (4) Due on sale clause.
- d. Assignment must be subject only to the interest of Seller **[OPTION - and [nature of interest(s) and amount(s)]]**.

The following paragraph is optional

- e. Lender must cause deed to be held in escrow.

Select one and only one of the following choices, from (1) to (8)

- f. Evidence of title and priority of lien must be based upon:
- (1) ALTA Loan Policy, insuring lender and assigns,
[OPTION - in the amount of \$[Amount].]
[OPTION - with [specify required endorsements] endorsements,]
[OPTION - policy to be without standard exceptions (“extended ALTA”),]
[OPTION - policy to be without standard survey exception.]
[OPTION - Policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]
[OPTION - Write Your Own]
 - (2) Mortgagee’s Title Policy insuring lender and assigns
[OPTION - in the amount of \$[Amount].]
[OPTION - policy to be without standard survey exception.]
[OPTION - policy to be without exception to Homestead, Survey or Taxes,]
[OPTION - Policy must reflect that all taxes and municipal liens have been brought current or paid.]
[OPTION - Such policy must contain no exceptions for parties in possession, mechanic’s or materialman’s liens, or matters which would be disclosed by an accurate survey.]
[OPTION - Policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]
 - (3) Attorney’s certificate of title or title opinion in favor of lender and assigns certifying that lender has obtained the required lien position.
[OPTION - Certificate or opinion will not contain a survey exception or an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Certificate or opinion must address that the real property and its use are in compliance with state and federal environmental laws and regulations, as well as zoning, subdivision and land use laws, as determinable from all relevant publicly issued, filed or recorded governmental documents.]
 - (4) Title insurance customarily obtained for similar transactions in this jurisdiction.
 - (5) Title and/or Lien Search or other evidence of proper ownership and lien position.
 - (6) CLTA Loan Policy.
 - (7) Limited Title Policy.
 - (8) Property, Judgment and Lien Report indicating that lender has obtained the required position.

In addition to the above, a "write your own" option is provided in case a survey or other endorsement is required

(9) **[Write Your Own]**

3. Collateral Assignment of (or lien on) Seller's Interest in Land Contract of Sale

Collateral Assignment of (or lien on) Seller's Interest in Land Contract of Sale between **[Seller]** (Seller) and **[Purchaser]** (Purchaser), creating a valid lien on Seller's interest covering real property sold by the Seller to Purchaser and located at **[address of property]**, and its proceeds.

- a. The outstanding balance due Seller under contract is **[\$Amount owed seller]**.
- b. Assignment must contain the following conditions: (1) Seller may receive payments from Purchaser so long as the Loan is not in default; (2) Seller must agree to direct Purchaser to make all future payments to Lender upon Loan default; and (3) Seller must agree that payment is due upon sale of seller's interest.
- c. Assignment must be subject only to the interest of Purchaser **[OPTION - and [nature of interest(s) and amount(s)]]**.

4. Assignment of Beneficial Interest and Power of Direction in Land Trust

Note: Some of the options in this collateral condition will vary according to the state in which the real property is located. Refer to Appendix B for more information.

Assignment of Beneficial Interest and Power of Direction in Land Trust holding title to real estate located at **[Property Address]**.

The 2 following paragraphs a and b are optional

- a. Subject only to the prior assignment(s) held by **[Prior Assignee]**, not exceeding **[\$Amount]**.
- b. Fee title to real estate must be subject only to prior lien(s) held by **[prior lienholders]**, not exceeding **[\$Amount]**.

Select one and only one of the following paragraphs c and d

- c. Title and lien position to be supported by ALTA Owner's Title Insurance Policy and current trust record.
- d. Evidence of title and lien position is required, in form of tract book search or attorney's letter of opinion and current trust record.

5. Leasehold Instrument on Building Constructed on Leased Land

The following [Option – Shared] must appear in 7a, 504 and EWCP Authorizations only if shared lien position.

[Option – Shared] [SELECT - First, Second, etc.] Leasehold [SELECT - Deed of Trust, Mortgage or other state specific instrument] (including due on sale clause) on Building(s) Constructed on Leased Land located at [address of property]. This property is [SELECT - commercial - OR - agricultural]. [OPTION - The lien is limited to \$[amount].]

The following must appear if first lien position.

- a. subject to no other liens.

The following must appear if junior lien position.

- b. subject only to prior lien(s) as follows:
- (1) First: **[name of lienholder] [SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount], with a revolving provision limited to a total principal outstanding of \$[amount]].**
 - (2) Second: **[name of lienholder] [SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount], with a revolving provision limited to a total principal outstanding of \$[amount]].**
 - (3) **[etc., up to four].**

The following must appear in 504 Authorizations only if shared lien position.

- c. The lien securing the 504 Loan is a shared lien pari passu with that of **[name of lender]** in the amount of **[\$[amount]]**. An intercreditor agreement, satisfactory to CDC and SBA, must be executed. The agreement (or a memorandum thereof) must be recorded.

The following paragraphs always appear

- d. Remaining term of lease, including options to renew exercisable solely by the Borrower, must cover term of Loan **[OPTION - plus [number of years] year(s)]**.
- e. Lease must contain clauses providing for the following:
- (1) Tenant's right to encumber leasehold estate;
 - (2) No modification or cancellation of lease without lender's or assignee's approval;
 - (3) Lender's or assignee's right to acquire the leasehold at foreclosure sale or by assignment and right to reassign the leasehold estate (along with right to exercise any options) by lender or successors; lessor may not unreasonably withhold, condition or delay the reassignment;
 - (4) Lender's or assignee's right to sublease;
 - (5) Lender's or assignee's rights upon default of the tenant or termination of the lease. This would include notice, extended time to cure (at least 60 days), time allotted for foreclosure and sale, and procedures for non-monetary defaults;
 - (6) Lender's or assignee's rights to hazard insurance proceeds resulting from damage to improvements;
 - (7) Lender's or assignee's right to share in condemnation proceeds.

- f. Lender must obtain Lessor's written consent to the leasehold **[Type of Instrument - same as above]** and a collateral assignment of lease.

The following paragraphs are optional.

Note : availability of options may vary depending on the state in which the real property is located - see Appendix B for more information.

- g. Any prior lien(s) that is (are) open ended as to future advances must be closed, in writing, according to applicable state law. The revolving line(s) of credit set out above, if any, must be limited in writing to the amount stated.
- h. Lender must obtain a written agreement from prior lienholders to provide Lender with **[number of days]** days written notice before commencing foreclosure of prior lien.
- i. Lender to file a Request for Notice pursuant to state law. For 504 loans, notice required to CDC and SBA CLSC.
- j. Written waiver of homestead required. (Residential property only.)
- k. Statement of non-homestead required. (Residential property only.)
- l. Written waiver of Business Homestead required if real property collateral is owned by an individual or an individual and spouse.
- m. Lender must obtain from prior lienholders written verification (1) of amount owing on prior obligation, (2) that prior obligation is current on payments, and (3) that prior obligation is not otherwise in default.
- n. Written waiver of redemption rights is required. (Non-residential property only.)
- o. Survey, certified to lender, is required, or prior survey and affidavit of no change acceptable to lender.
- p. Statutory Condition and the Statutory Power of Sale language required.

Select one and only one of the following choices, from (1) to (8)

- q. Evidence of title and priority of lien must be based upon:
- (1) ALTA Loan Policy, insuring lender and assigns,
[OPTION - in the amount of \$[Amount].]
[OPTION - with [specify required endorsements] endorsements,]
[OPTION - policy to be without standard exceptions ("extended ALTA"),]
[OPTION - policy to be without standard survey exception.]
[OPTION - Policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]
[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]
[OPTION - Write Your Own]
- (2) Mortgagee's Title Policy insuring lender and assigns
[OPTION - in the amount of \$[Amount].]
[OPTION - policy to be without standard survey exception,]
[OPTION - policy to be without exception to Homestead, Survey or Taxes,]
[OPTION - Policy must reflect that all taxes and municipal liens have been brought

current or paid.]

[OPTION - Such policy must contain no exceptions for parties in possession, mechanic's or materialman's liens, or matters which would be disclosed by an accurate survey.]

[OPTION - Policy will not contain an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]

[MUST APPEAR if R/E located in VT - Policy must provide affirmative coverage over any environmental contamination on property when publicly issued, filed, or recorded government documents indicate that environmental contamination is above federal or state action levels.]

- (3) Attorney's certificate of title or title opinion in favor of lender and assigns certifying that lender has obtained the required lien position.

[OPTION - Certificate or opinion will not contain a survey exception or an M.G.L. Section 21(e) exception unless a detailed engineering study satisfactory to Lender is submitted prior to closing.]

[MUST APPEAR if R/E located in VT - Certificate or opinion must address that the real property and its use are in compliance with state and federal environmental laws and regulations, as well as zoning, subdivision and land use laws, as determinable from all relevant publicly issued, filed or recorded governmental documents.]

- (4) Title insurance customarily obtained for similar transactions in this jurisdiction.
(5) Title and/or Lien Search or other evidence of proper ownership and lien position.
(6) CLTA Loan Policy.
(7) Limited Title Policy.
(8) Property, Judgment and Lien Report indicating that lender has obtained the required position.

In addition to the above, a "write your own" option is provided in case a survey or other endorsement is required

- (9) **[Write Your Own]**

The following paragraph (LANDLORD'S WAIVER) is optional

SOP 50-10 5(A), Subpart B, Chapter 7 - Requirements for Collateral on leased land

- r. Lender must obtain a written agreement from all Lessors (including sublessors) agreeing to: (1) Subordinate to Lender Lessor's interest, if any, in this property; (2) Provide Lender written notice of default and reasonable opportunity to cure the default; and (3) Allow Lender the right to take possession and dispose of or remove the collateral.

The following paragraphs must appear in 504 Authorizations only when collateral is Project Property.

- s. CDC must obtain in recordable form written subordination agreements from any tenants occupying any of the Project real property required as collateral. Appropriate subordination language may be included in the Lease as an alternative.

- t. At the time of Closing, either:
- (1) there must be no contractor's, mechanic's or materialman's lien on the Property, including a lien which might possibly be filed after Closing, which would impair the stated priority of the CDC/SBA lien, and there must be no other circumstances adversely affecting the value of the property; or,
 - (2) no exception for these in the title insurance commitment/policy, or
 - (3) The title insurance company must provide affirmative coverage to CDC and SBA over any such exceptions, affording reasonably adequate protection against material loss arising from such exceptions. In addition, the title insurance company must provide such endorsements as CDC or SBA deems necessary to protect CDC and SBA reasonably against material loss arising from any other exceptions. In states where a survey is customarily provided for title insurance coverage, Borrower must also provide a survey certified to SBA/CDC, or a prior survey acceptable to SBA/CDC and the title insurer and a satisfactory survey affidavit of no change.

6. Leasehold Security Interest in building on leased land

[Option – Shared] [SELECT - First, Second, etc.] Leasehold Security Interest (including due on sale clause) in building on leased land located at [address of property].

The following must appear if junior lien position.

- a. Subject to lien(s) totaling not more than \$**[Amount]**].

The following must appear if junior lien position.

- b. Subject only to prior lien(s) as follows:
- (1) First: **[name of lienholder] [SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount], with a revolving provision limited to a total principal outstanding of \$[amount]]**.
 - (2) Second: **[name of lienholder] [SELECT - in the amount of \$[amount] - OR - in the present amount of \$[amount], with a revolving provision limited to a total principal outstanding of \$[amount]]**.
 - (3) **[etc., up to four]**.

The following must appear in 504 Authorizations only if shared lien position.

- c. The lien securing the 504 Loan is a shared lien pari passu with that of **[name of lender]** in the amount of \$**[amount]**. An intercreditor agreement, satisfactory to CDC and SBA, must be executed. The agreement (or a memorandum thereof) must be recorded.

The following paragraphs must always appear.

- d. Remaining term of lease, including options to renew exercisable solely by the Borrower, must cover term of Loan **[OPTION - plus [number of years] year(s)]**.
- e. Lease must contain clauses providing for the following:
- (1) Tenant's right to encumber leasehold estate;
 - (2) No modification or cancellation of lease without lender's or assignee's approval;

- (3) Lender's or assignee's right to acquire the leasehold at foreclosure sale or by assignment and right to reassign the leasehold estate (along with right to exercise any options) by lender or successors; lessor may not unreasonably withhold, condition or delay the reassignment;
 - (4) Lender's or assignee's right to sublease;
 - (5) Lender's or assignee's rights upon default of the tenant or termination of the lease. This would include notice, extended time to cure (at least 60 days), time allotted for foreclosure and sale, and procedures for non-monetary defaults;
 - (6) Lender's or assignee's rights to hazard insurance proceeds resulting from damage to improvements;
 - (7) Lender's or assignee's right to share in condemnation proceeds.
- f. Lender must obtain Lessor's written consent and subordination to the fixture filing.

7. Lessee's Interest in a Lease by Assignment

Collateral Assignment of Lessee's Interest in the Lease between **[Lessor's name]**, Lessor, and **[Lessee's name]**, Lessee, **[OPTION - dated [date of lease]]** for the premises located at **[address of leased premises]**, including right of reassignment, Lessor's consent to the assignment and agreement to subordinate its interest in any property which is collateral for the Loan. Remaining term of lease, including options to renew exercisable solely by the Borrower, must cover term of Loan **[OPTION - plus [number of years] year(s)]**. Lease must require Lessor to provide Lender/SBA **[number of days - default is 60]**-day written notice of intent to terminate the lease for Borrower's default and an opportunity to cure.

8. Lessee's Interest in a Lease by Lien, Mortgage or Deed of Trust

[SELECT - First, Second, etc.] Lien, Mortgage or Deed of Trust on Lessee's interest (including due on sale clause) in the lease between **[Lessor's name]**, Lessor, and **[Lessee's Name]**, Lessee, **[MUST APPEAR if not a first lien position - subject to lien(s) totaling not more than \$[Amount]]**. This property is **[SELECT - residential - OR - commercial - OR - agricultural]**. The terms of the lease or the lien instrument must include a right of reassignment, Lessor's consent to the assignment and agreement to subordinate its interest in any property which is collateral for the Loan. Remaining term of lease, including options to renew exercisable solely by the Borrower, must cover term of Loan **[OPTION - plus [number of years] year(s)]**. Lease must require Lessor to provide Lender/SBA **[number of days - default is 60]**-day written notice of intent to terminate the lease for Borrower's default and an opportunity to cure.

9. Leasehold on Tribal Land

Assignment of Leasehold on Tribal Land. [SELECT - First, Second, etc.] Assignment, with right of reassignment, of all of Borrower's rights and interests in and to a certain Lease between Borrower (as Lessee) and **[name of Indian tribe]** Indian Tribe (as Lessor) covering premises located at **[location of leasehold]**, **[MUST APPEAR if not a first lien position -** subject to lien(s) totaling not more than **\$(Amount)]** to include written consent of the Tribal Council and the Secretary of the Interior. Remaining term of lease, including options to renew exercisable solely by the Borrower, must cover term of Loan **[OPTION - plus [number of years] year(s)]**.

10. Cooperative Apartment

[SELECT - First, Second, etc.] Security Interest in Cooperative Apartment located at **[property address]**, including an Assignment of Proprietary Lease to Premises and pledge of shares of stock in Cooperative Apartment, subject to recognition of lien by Cooperative Association/Corporation. A Uniform Commercial Code lien search evidencing the required lien position is required.

C. Security Interests

1. Personal Property

This section should be used more than once if different lien positions are taken on different kinds of personal property.

For Puerto Rico Chattel Mortgage only: the text 'perfected security interest' will be replaced with 'chattel mortgage'.

The following [Option – Shared] must appear in 7a, 504 and EWCP Authorizations only if shared lien position.

[Option – Shared] [SELECT - First, Second, etc.] perfected security interest, [MUST APPEAR if first lien position - subject to no other liens] in the following personal property (including any proceeds and products), **[SELECT - whether now owned or later acquired - OR - acquired with loan or project proceeds, including all replacements and substitutions]**, wherever located:

[OPTION - Equipment;]

[OPTION - Fixtures;]

[OPTION - Inventory;]

[OPTION - Accounts;]

[OPTION - Instruments;]

[OPTION - Chattel Paper;]

[OPTION - General Intangibles;]

[OPTION - Farm Products - Crops growing or to be grown, their products, and all accounts or general intangibles arising from their sale ;]

[OPTION - Farm Products - All livestock now owned, in gestation and later acquired, including their products and natural increase, if any;]

[OPTION - Write Your Own]

The following must appear in 504 Authorizations only if shared lien position.

- a. The lien securing the 504 Loan is a shared lien pari passu with that of **[name of lender]** in the amount of **[\$[amount]]**. An intercreditor agreement, satisfactory to CDC and SBA, must be executed. The agreement (or a memorandum thereof) must be recorded.

If junior lien position, select one or more of the following options (a, b, and c).

Note : Options a and c can be repeated if necessary

- b. Subject only to the prior lien of **[prior lienholder]** in the amount of **[\$[Amount]]** on the following collateral: **[SELECT from list of personal properties selected above]**
- c. Any prior lien that is open ended as to future advances must be closed, in writing, according to applicable state law.
- d. Subject only to the interest of **[lender's name]** under a Line of Credit in the maximum amount of **[\$[Amount]]** on the following collateral: **[SELECT from list of personal properties selected above]**

The following paragraph (LANDLORD'S WAIVER) is optional

- e. Lender must obtain a written agreement from all Lessors (including sublessors) agreeing to: (1) Subordinate to Lender Lessor's interest, if any, in this property; (2) Provide Lender written notice of default and reasonable opportunity to cure the default; and (3) Allow Lender the right to take possession and dispose of or remove the collateral.

The following paragraph must appear if equipment or fixtures is selected above

- f. Lender must obtain a list of all equipment and fixtures that are collateral for the Loan. For items with a unit value of \$5,000 or more, the list must include a description and serial number, if applicable.

The following paragraph must always appear

- g. Lender must obtain an appropriate Uniform Commercial Code lien search evidencing all required lien positions. If UCC search is not available, another type of lien search may be substituted.

The following paragraph must appear in 7(a) Authorizations only if junior lien position

- h. Lender must take a purchase money security interest in all personal property acquired with Loan proceeds.

The following paragraphs must appear in 504 Authorizations only when collateral is Project Property.

- i. At the time of Closing, there must be no circumstances adversely affecting the value of the property. There must be no lien on the Property, including a lien which might possibly be filed after Closing, which impairs the stated priority of the CDC/SBA lien.

2. Liquor License

[SELECT - First, Second, etc.] Security interest in [SELECT - Liquor License #[License number] and the proceeds of any sale of the license - OR - Proceeds of the sale of Liquor License #[License number]].

The following must appear if first lien position.

- a. subject to no other liens.

The following must appear if junior lien position.

- b. subject only to prior lien(s) as follows:
 - (1) First: **[name of lienholder]** in the amount of **#[amount]**
 - (2) Second: **[name of lienholder]** in the amount of **#[amount]**
 - (3) [etc., up to four]

3. Vehicle

[SELECT - First, Second, etc.] Security Interest on the following Vehicle - Make or Model: [INPUT], Year: [INPUT].

The following must appear if first lien position.

- a. subject to no other liens.

The following must appear if junior lien position.

- b. subject only to prior lien(s) as follows:
 - (1) First: **[name of lienholder]** in the amount of **#[amount]**
 - (2) Second: **[name of lienholder]** in the amount of **#[amount]**
 - (3) [etc., up to four]

4. Mobile Home

[SELECT - First, Second, etc.] Security Interest in a Mobile Home, Serial Number [serial number], owned by [record owner] located at [property address].

The following must appear if first lien position.

- a. subject to no other liens.

The following must appear if junior lien position.

- b. subject only to prior lien(s) as follows:
 - (1) First: **[name of lienholder]** in the amount of \$**[amount]**
 - (2) Second: **[name of lienholder]** in the amount of \$**[amount]**
 - (3) [etc., up to four]

5. Aircraft

[SELECT - First, Second, etc.] Perfected Security Agreement recorded with the Federal Aviation Administration (FAA) Oklahoma City, Oklahoma, against the following aircraft - Make: **[make], Model: **[model]**, Year: **[year]**.**

The following must appear if first lien position.

- a. subject to no other liens.

The following must appear if junior lien position.

- b. subject only to prior lien(s) as follows:
 - (1) First: **[name of lienholder]** in the amount of \$**[amount]**
 - (2) Second: **[name of lienholder]** in the amount of \$**[amount]**
 - (3) [etc., up to four]

The following paragraph always appears

- c. Lender must verify title and lien position by Certificate.

6. Vessel

[SELECT - First, Second, etc.] Preferred Ship's Mortgage recorded with the U.S. Coast Guard against the vessel named **[name of vessel], and noted on the vessels' official log.**

The following must appear if first lien position.

- a. subject to no other liens.

The following must appear if junior lien position.

- b. subject only to prior lien(s) as follows:
 - (1) First: **[name of lienholder]** in the amount of \$**[amount]**
 - (2) Second: **[name of lienholder]** in the amount of \$**[amount]**
 - (3) [etc., up to four]

The following paragraph always appears

- c. Lender must verify lien position by Certificate issued by U.S. Coast Guard.

*The following paragraphs must appear in **504 Authorizations only** when collateral is Project Property.*

- d. At the time of Closing, there must be no circumstances adversely affecting the value of the property. There must be no lien on the Property, including a lien which might possibly be filed after Closing, which impairs the stated priority of the CDC/SBA lien.

D. Assignments of Interest

1. Certificate of Deposit

Assignment of certificate of deposit held by **[owner of CD]** in the amount of \$**[Amount of CD]**, with acknowledgment from the issuing financial institution.

2. Mutual Fund

Assignment of Mutual Fund Interest: Assignment to Lender by **[shareholder]** (shareholder) of all interest in **[name of Mutual Fund account]**. Lender must obtain acknowledgment of such assignment from the broker or Mutual Fund.

3. Corporate Stock (by pledge)

Pledge of Corporate Stock: Pledge to Lender by **[shareholder]** (shareholder) of **[number of shares]** shares of stock (but not voting rights) in **[name of company]**.

4. Note

Assignment of note dated **[date of note]**, executed by **[Input]** to **[Input]** with approximate balance due of \$**[Amount of balance due]** **[OPTION - and assignment of: [Reverts to full list of collateral conditions to select]]**

5. Contract

Contract Assignment: A valid assignment and first security interest covering all proceeds under contract dated **[date of contract]** between Borrower and **[name of other party to contract]** in the amount of \$**[Amount]**.

6. Government Contract

U.S. Government Contract Assignment and Notice of Assignment: Assignment of monies due or to become due under federal contract number **[contract number]** with the **[name of agency]** in the amount \$**[Amount of contract]** and any subsequent modifications or additions. Lender must perfect the assignment pursuant to Federal Acquisition Regulations.

7. U.S. Patent

Assignment of U.S. patent number [patent number] issued to [patent holder]. Lender must comply with U.S. Patent and Trademark laws.

8. Franchise Agreement

SOP 50-10(4), pg. 112-113, Subpart "A", Chapter 5, Paragraph 6.f. - SBA Franchise Requirements

Assignment of Franchisee's Interest. Franchisor must agree to allow Franchisee to assign the Franchise Agreement for security purposes with rights of reassignment.

Appendix B

State-specific Options in the Standard Collateral Conditions

This appendix describes the title options and other requirements for real property collateral liens in SBA authorizations, for every U.S. state and territory.

For each state, this appendix lists below the types of lien instruments available, the available evidence of title options and additional provisions required by the SBA for real property liens, called Boilerplate Provisions. The Boilerplate Provisions for each state are mandatory where applicable.

Please note special requirements for 504 projects: the ALTA Title Policy is required where it is available. The exceptions are Alabama, Indiana, Iowa and Texas.

Evidence of Title Key. *Refer to Appendix A for the full text.*

- (1) ALTA Loan Policy insuring lender and assigns
- (2) Mortgagee's Title Policy insuring lender and assigns
- (3) Attorney's Certificate of title, or title opinion in favor of lender (...)
- (4) Title Insurance customarily obtained for similar transactions in this state
- (5) Title and/or Lien Search, or other evidence of proper ownership (...)
- (6) CLTA Loan Policy
- (7) Limited Title Policy
- (8) Property, Judgment and Lien Report indicating lender obtained required position

Boilerplate Provision Requirements Key. *Refer to Appendix A for the exact text.*

- (1) (index not used)
- (2) Prior open ended lien(s) closed in writing according to applicable state law. Revolving line(s) of credit limited in writing to the amount stated.
- (3) Written agreement from prior lienholders to provide Lender with [Number of days] days written notice before commencing foreclosure of prior lien.
- (4) Request for Notice filed pursuant to state law. For 504 Loans, notice required to CDC and SBA CSLC.
- (5) Written waiver of homestead. (Residential property only).
- (6) Prior lienholder written verification (a) of amount owing on prior obligation, (b) that prior obligation is current on payments, and (c) that prior obligation is not otherwise in default.
- (7) Written waiver of redemption rights. (Non-residential property only).
- (8) Survey, certified to Lender, or prior survey and affidavit of no change acceptable to Lender.
- (9) Written waiver of Business Homestead required if real property collateral is owned by an individual or an individual and spouse.
- (10) Statement of non-homestead. (Residential property only.)
- (11) Statutory Condition and the Statutory Power of Sale language required.

Real Property Provisions by state

Alabama

Instrument: Mortgage
Evidence of Title: (3) (4) (5)
Boilerplate: (6) (10)

Alaska

Instrument: Deed of Trust
Evidence of Title: (1) (2) (5)
Boilerplate: (2) (3) (6)

Arizona

Instrument: Deed of Trust
Evidence of Title: (1) (2) (5)
Boilerplate: (2) (6)

Arkansas

Instrument: Mortgage, Deed of Trust
Evidence of Title: (1) (2) (5)
Boilerplate: (2) (3) (5) (6) (10)

California

Instrument: Deed of Trust
Evidence of Title: (1) (6) (7) (4) (5)
Boilerplate: (2) (4) (6)

Colorado

Instrument: Deed of Trust
Evidence of Title: (1) (5)
Boilerplate: (2) (6) (10)

Connecticut

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (5)
Boilerplate: (2) (5) (6)

Delaware

Instrument: Mortgage
Evidence of Title: (1) (4) (5)
Boilerplate: (2) (6)

Florida

Instrument: Mortgage
Evidence of Title: (1) (5)
Boilerplate: (2) (6) (10)

Georgia

Instrument: Deed to Secure Debt
Evidence of Title: (1) (3) (4) (5)
Boilerplate: (2) (3) (6)

Guam

Instrument: Mortgage
Evidence of Title: (1) (4) (5)
Boilerplate: (2) (6) (10)

Hawaii

Instrument: Mortgage
Evidence of Title: (1) (4) (5)
Boilerplate: (2) (6)

Idaho

Instrument: Deed of Trust, Mortgage
Evidence of Title: (1) (5)
Boilerplate: (6)

Illinois

Instrument: Mortgage
Evidence of Title: (1) (3) (5)
Boilerplate: (2) (5) (6) (7) (10)

Indiana

Instrument: Mortgage
Evidence of Title: (2) (5)
Boilerplate: (2) (3) (6)

Iowa

Instrument: Mortgage
Evidence of Title: (3) (5)
Boilerplate: (2) (5) (6)

Kansas

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (4) (5)
Boilerplate: (2) (6) (7) (10)

Kentucky

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (4) (5)
Boilerplate: (2) (3) (6)

Louisiana

Instrument: Mortgage
Evidence of Title: (1) (2) (5)
Boilerplate: (2) (3) (5) (6) (10)

Maine

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (5)
Boilerplate: (2) (6)

Maryland

Instrument: Deed of Trust; Indemnity Deed of Trust (when securing guarantee)
Evidence of Title: (1) (2) (3) (8) (5)
Boilerplate: (2) (3)

Massachusetts

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (5)
Boilerplate: (2) (6) (10) (11)

Michigan

Instrument: Mortgage
Evidence of Title: (1) (5)
Boilerplate: (2) (3)

Minnesota

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (4) (5)
Boilerplate: (2) (4) (6) (10)

Mississippi

Instrument: Deed of Trust
Evidence of Title: (1) (3)
Boilerplate: (2) (3) (5) (6) (10)

Missouri

Instrument: Deed of Trust
Evidence of Title: (1) (2) (3) (4) (5)
Boilerplate: (2) (4) (6)

Montana

Instrument: Montana Trust Indenture, Mortgage
Evidence of Title: (1)
Boilerplate: (2) (3)

Nebraska

Instrument: Deed of Trust
Evidence of Title: (1) (2) (3)
Boilerplate: (2) (4) (6) (10)

Nevada

Instrument: Deed of Trust
Evidence of Title: (1) (2) (3)
Boilerplate: (2) (4) (5) (6) (10)

New Hampshire

Instrument: Mortgage
Evidence of Title: (1) (3)
Boilerplate: (2) (3) (5) (6) (10)

New Jersey

Instrument: Mortgage
Evidence of Title: (1) (2)
Boilerplate: (6) (10)

New Mexico

Instrument: Mortgage
Evidence of Title: (1) (2)
Boilerplate: (2) (3) (6)

New York

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (4) (5) (8)
Boilerplate: (2) (3) (6)

North Carolina

Instrument: Deed of Trust
Evidence of Title: (1) (2) (3) (4)
Boilerplate: (2) (4) (6)

North Dakota

Instrument: Mortgage
Evidence of Title: (1) (2) (3)
Boilerplate: (2) (5) (6) (10)

Ohio

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (5)
Boilerplate: (2) (6)

Oklahoma

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (4) (5)
Boilerplate: (2) (6) (10)

Oregon

Instrument: Deed of Trust, Mortgage
Evidence of Title: (1) (4) (5)
Boilerplate: (2) (6)

Pennsylvania

Instrument: Mortgage
Evidence of Title: (1) (4) (5)
Boilerplate: (2) (6)

Puerto Rico

Instrument: Mortgage
Evidence of Title: (1) (2) (5)
Boilerplate: (2) (6)

Rhode Island

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (4) (5)
Boilerplate: (2) (3) (10) (11)

South Carolina

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (5)
Boilerplate: (2) (3) (6)

South Dakota

Instrument: Mortgage
Evidence of Title: (1) (2) (5)
Boilerplate: (2) (5) (6) (10)

Tennessee

Instrument: Deed of Trust
Evidence of Title: (1) (3)
Boilerplate: (2) (3) (6) (8)

Texas

Instrument: Deed of Trust
Evidence of Title: (2) (5)
Boilerplate: (2) (3) (5) (6) (9)

Utah

Instrument: Deed of Trust
Evidence of Title: (1) (5)
Boilerplate: (2) (4) (6)

Vermont

Instrument: Mortgage
Evidence of Title: (1) (2) (3) (5)
Boilerplate: (2) (3) (5) (6) (10)

Virginia

Instrument: Deed of Trust
Evidence of Title: (1) (3) (5)
Boilerplate: (2) (3) (5) (6) (10)

Washington

Instrument: Deed of Trust, Mortgage
Evidence of Title: (1) (2)
Boilerplate: (2) (6)

Washington DC

Instrument: Deed of Trust
Evidence of Title: (1) (4) (5)
Boilerplate: (2) (3) (6) (10)

West Virginia

Instrument: Deed of Trust, Mortgage
Evidence of Title: (1) (3) (5)
Boilerplate: (2) (3) (4) (6)

Wisconsin

Instrument: Mortgage
Evidence of Title: (1) (5)
Boilerplate: (2) (3) (6) (10)

Wyoming

Instrument: Mortgage
Evidence of Title: (1) (2) (4) (5)
Boilerplate: (5) (6) (10)